
CONSTRUCTION REIMBURSEMENT, CONTRIBUTION AND AUDIT AGREEMENT

DATED AS OF JULY _____, 2011

AMONG

THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION

AND

**THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND
COUNTY OF SHELBY, TENNESSEE**

AND

ELECTROLUX HOME PRODUCTS, INC.

PROJECT: Construction of Infrastructure and other Improvements associated with
Manufacturing Facility in Memphis, Tennessee

CONSTRUCTION REIMBURSEMENT, CONTRIBUTION AND AUDIT AGREEMENT

This Construction Reimbursement, Contribution and Audit Agreement (this "Agreement") is made and entered into as of this ____ day of July, 2011, by and among Electrolux Home Products, Inc., a Delaware corporation ("Electrolux"), the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee ("IDB") and the Memphis and Shelby County Port Commission, an organization created by Chapters 500 and 529 of the Private Acts of Tennessee of 1947, as amended ("Port").

RECITALS

I. Electrolux, IDB, the State of Tennessee (the "State"), Shelby County, Tennessee (the "County") and the City of Memphis, Tennessee (the "City", IDB, the State, County and City hereinafter collectively being the "Public Authorities") entered into that certain Site Location and Development Agreement dated as of December 15, 2010 (the "Site Agreement"), pursuant to which the Public Authorities have agreed to provide certain incentives to Electrolux, as more specifically set forth in the Site Agreement.

II. The parties intend that an industrial project be constructed upon that tract of real property constituting approximately 218.00 acres as more specifically described in Exhibit A attached hereto (the "Facility Site"), presently anticipated to consist of a manufacturing facility of approximately 700,000 square feet, a warehouse of approximately 100,000 square feet, and ancillary buildings including guard houses, a pump room, a compressor room, scrap buildings and an electrical substation. The project will be designed to accommodate the process for manufacturing and storing a wide variety of cooking products. All improvements to be made to the Facility Site, and all fixtures, machinery, furnishings, equipment, supplies, and all other property of any kind installed or used at the Facility Site are collectively called the "Project".

III. The Facility Site and Project are collectively called the "Premises."

IV. In order to defray certain infrastructure costs associated with the design, construction, furnishing and equipping of the Premises, and for certain other Approved Infrastructure Costs specified in this Agreement, certain Governmental Entities have agreed to provide financial incentives in the aggregate amount of \$137,000,000, (One Hundred Thirty Seven Million Dollars) (collectively, the "Public Funds") subject to the terms, conditions and limitations set forth in the Site Agreement and this Agreement. Such respective commitments to provide funding to the Project are as follows:

<u>State</u>	\$97,000,000.00
<u>County</u>	\$20,000,000.00
<u>City</u>	\$20,000,000.00

The above sums represent individually, and cumulatively, the Public Funding Cap relative to IDB's obligations hereunder. In addition to the foregoing, Electrolux anticipates that

it will contribute additional funds in connection with the Premises in the approximate amount of \$60,000,000.00.

Under no circumstances shall any Public Authorities' funding responsibility exceed the amount set forth as its funding responsibility in Section 6.1 of the Site Agreement, and IDB's obligations hereunder are expressly limited by the amount it receives pursuant to said Section 6.1. IDB's receipt from the respective Public Authorities of each of the amounts set forth above is an express condition precedent to the obligations of IDB and Port hereunder.

V. Immediately upon the Start of Production, the Port shall contribute both the Premises, as well as an additional undeveloped approximately 582.359-acre tract of real property as more specifically described in Exhibit A attached hereto (the "Distribution Site") to Electrolux, and both Port and Electrolux intend to treat the benefits granted by Port herein to constitute non-shareholder contributions to Electrolux's capital pursuant to Section 118 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder; and to treat such benefits as material inducements to Electrolux to locate the Project in Memphis, Tennessee; and such benefits are (i) not compensation to Electrolux for specific quantifiable goods or services provided to Port and/or IDB by Electrolux; (ii) will become a permanent part of Electrolux's working capital structure; (iii) will result in benefits to Electrolux commensurate with their value; (iv) will be ordinarily employed by Electrolux to contribute to the production of additional income; and (v) have been bargained for among Electrolux, IDB and Port.

THEREFORE, in consideration of the foregoing and of the various agreements set forth in this Agreement, IDB, Port and Electrolux agree as follows:

ARTICLE I DEFINITIONS AND CONDITIONS PRECEDENT

SECTION 1.1. Definition of Terms Used in This Agreement. Unless the context shall otherwise require, capitalized terms used and not defined herein or the Appendices and Exhibits hereto shall have the meanings assigned thereto in the form PILOT Lease by and between Electrolux and IDB, a copy of which is attached hereto as Exhibit B ("PILOT Lease"), for all purposes of this Agreement. In the event of a conflict between a definition herein and a definition contained in the PILOT Lease, the definition set forth herein or in the Appendix hereof shall control over a definition contained in the PILOT Lease for the purposes of this Agreement.

SECTION 1.2. Effective Date; Condition Precedent. Except as otherwise provided herein, Electrolux, IDB and the Port acknowledge and agree that the obligations contained in this Agreement shall not become operative until the following conditions have been satisfied (the "Conditions Precedent"):

(a) final approval of, and execution by all parties to the State Grant Agreement attached hereto as Exhibit H (which the IDB represents shall occur no later than July 18, 2011); and

(b) final approval of the Project by the State Building Commission.

As used herein, the "Effective Date" of this Agreement shall be the date upon which each of the Conditions Precedent are met. Upon completion of the aforementioned conditions precedent to determine the Effective Date, the Parties shall agree on a mutually acceptable Memorandum of Agreement which shall identify the Effective Date and which will be filed with the Shelby County Register. If the Conditions Precedent are not met by July 18, 2011, Electrolux may terminate this Agreement at an time immediately upon written notice to the IDB. In the event of such termination by Electrolux, the Site Agreement shall automatically terminate, except for any obligations under the Site Agreement for any of the Public Authorities (as defined in the Site Agreement) to pay for certain work performed prior to July 18, 2011, or to otherwise reimburse Electrolux pursuant to the terms thereof.

ARTICLE II BASIC TERMS

SECTION 2.1. Construction of the Project. The parties hereto acknowledge and agree that, as of the Effective Date, construction of the Project has not commenced. All construction of the Project will comply in all material respects with all applicable Governmental Approvals. Prior to any work which requires Permits, all Permits shall have been paid for, and shall be in full force and effect. The use and occupancy of the Premises when completed will comply in all material respects with all Governmental Approvals and with all Covenants, Conditions and Restrictions.

SECTION 2.2. Project Budget. The Project Budget, as updated from time to time, constitutes all costs and expenses which will be incurred by Electrolux, including, without limitation, Approved Infrastructure Costs to be reimbursed hereunder, in connection with the acquisition, development and maintenance of the Premises through the Start of Production.

SECTION 2.3. Public Purpose. IDB shall only be required to reimburse Electrolux for those monies expended by Electrolux for construction of those elements of the Project that are Approved Infrastructure Costs and permitted expenditures of public funds under the laws of the State of Tennessee. "Approved Infrastructure Costs" shall mean any Project Costs falling within one or more of the categories set forth in this Section 2.3. The Project Budget showing the Approved Infrastructure Costs is attached hereto as Exhibit C, along with a designation of the applicable public funding source for such Approved Infrastructure Costs. For purposes of any and all decisions regarding the determination of Approved Infrastructure Costs, the IDB and Electrolux shall work in good faith to maximize Electrolux's benefits obtained under this Agreement. Subject to Electrolux meeting its obligations hereunder, the following shall constitute Approved Infrastructure Costs:

(a) The construction of infrastructure items in support of the location of the Project upon the Facility Site located in the County of Shelby, City of Memphis;

(b) Acquisition and installation of: (i) equipment, design, engineering, site preparation, erection, construction and equipping of the Facility Site and improvements thereon (including the acquisition of any materials or goods needed to accomplish any

of the foregoing), and (ii) infrastructure improvements and development including, but not limited to, roads, sewer, water, utility infrastructure, rail infrastructure and related storage facilities, in each case in support of the location of the Project at the Facility Site; and

(c) Infrastructure improvements and development including but not limited to roads, sewer, water, utility infrastructure, rail infrastructure, and related storage facilities in each case in support of the location of the Project at the Facility Site, design engineering, site preparation, erection and construction of the Premises and improvements (including the acquisition of any materials or goods needed to accomplish any of the foregoing) and such other site development, facilities, improvements and capital expenditures that may be financed consistent with the provisions of Chapter 21 of Title 9, Chapter 16 of Title 13 and Chapter 55 of Title 7 of the Tennessee Code Annotated.

Any equipment, to the extent that it represents an Approved Infrastructure Cost, shall be reimbursed only from funds provided by the State hereunder and such costs shall be credited against both the individual cap applicable to State funds and to the overall Public Funding Cap.

SECTION 2.4. Vendor Contracts; Exclusive Agency. Electrolux shall cause the Project to be constructed and shall be the exclusive party to execute and enter into all contracts, agreements, purchase orders, and related documents that Electrolux determines to be necessary or appropriate for the completion of the Project in the exercise of its sole and absolute discretion (each being a "Vendor Contract"). Such Vendor Contracts shall include, but not be limited to the acquisition of all materials or goods necessary to accomplish: (i) the design, engineering, site preparation, erection, construction and equipping of the Premises, (ii) all infrastructure improvements and development including but not limited to roads, sewer, water, utility infrastructure, rail infrastructure and related storage facilities, (iii) such other development, facilities, improvements and capital improvements pursuant to Section 6.1(b) of the Site Agreement. Electrolux shall thereafter oversee and manage the construction of the Project which shall be completed in accordance with the Plans, the Site Agreement and the Application. In furtherance of the foregoing:

(a) Electrolux shall comply with the requirements of the State Building Commission.

(b) All Vendor construction contracts in connection with the Project require compliance with the prevailing wage laws as provided in TCA Section 12-4-401. All such contracts shall require a performance and payment bond in the amount of 100% of the contract amount and shall name IDB as an obligee. These bonds shall be issued by a surety company licensed to do business and issue bonds in Tennessee. The cost of such bonds shall not be an Approved Infrastructure Cost.

SECTION 2.5. Title to Real Property; Encumbrances. Port has or will acquire title to the Facility Site and Distribution Site subject to the Permitted Encumbrances. Port shall not, without the prior written consent of Electrolux, directly or indirectly create or consent to the creation or existence of any lien or encumbrance (other than as requested by Electrolux in

writing) upon the Facility Site or Distribution Site or Port's interest therein, or convey title to the Facility Site or Distribution Site in any manner whatsoever, except as otherwise provided herein or as requested or approved by Electrolux in writing. Port shall promptly consent to and allow Electrolux to place any easements, conditions, covenants, use restrictions or other encumbrances (including, but not limited to, the dedication of a portion or portions of the Facility Site or Distribution Site for public use) on the Facility Site or Distribution Site which Electrolux reasonably believes to be necessary, appropriate or desirable in connection with the operation of the Project. Port will promptly execute any and all documents reasonably requested by Electrolux to grant any such easements, conditions, covenants, use restrictions or other encumbrances, all at the expense of Electrolux, provided that such documents shall not impose any personal liability on Port. Port shall have no obligation to obtain any third-party consent or approval with respect to any such easements, conditions, covenants, use restrictions or other encumbrances on the Facility Site or Distribution Site which are requested or placed by Electrolux, as aforesaid.

SECTION 2.6. License; Memorandum. Commencing upon the date of this Agreement and until the Premises are conveyed to Electrolux pursuant to Section 5.1(c) hereof, Port hereby grants to Electrolux, its employees, agents, contractors and invitees the exclusive, revocable (only in the event of the termination of this Agreement) right and privilege to use the Facility Site, together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, for the purpose of development and construction of the Project. A memorandum of this Agreement shall be executed and recorded by the IDB in the proper public office for the recordation of deeds in Shelby County, Tennessee immediately following the execution hereof.

SECTION 2.7. Material Facts. Neither this Agreement, nor any other document, financial information, certificate or statement furnished to IDB by Electrolux contains, or will contain, to the actual knowledge of Electrolux at the time of submission, any untrue statement of a material fact or will intentionally omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

SECTION 2.8. Community Participation. To further the purposes of the relevant agencies, and for the general benefit of their respective communities, Electrolux will follow its general practice of supporting communities in which it operates by directing that at least Thirty Million Dollars (\$30,000,000) worth of goods and services for construction of the Project be acquired from within the community. For purposes hereof, the "community" shall encompass businesses, individuals, contractors and other members of the general public doing business within the Memphis Metropolitan Statistical Area (comprised of Shelby County, Tipton County and Fayette County, Tennessee; DeSoto County, Marshall County, Tate County and Tunica County, Mississippi; and Crittenden County, Arkansas). Such members of the community should be those registered to do business and in good standing with the State of Tennessee.

ARTICLE III DISBURSEMENTS; CONDITIONS

SECTION 3.1. Disbursement Procedure. All requests by suppliers, contractors and vendors (collectively, the "Vendors") for payments pursuant to Vendor Contracts shall be

remitted directly to Electrolux for review and approval. Each such request for payment shall include such documentation as Electrolux and IDB may reasonably require, including but not limited to invoices, lien waivers associated with any and all work, labor, services and materials performed or provided by such Vendor through the effective date of the request for payment, and supporting documentation demonstrating to the reasonable satisfaction of Electrolux that the payment that is sought is properly due. Electrolux shall make any and all payments required under the Vendor Contracts. Electrolux shall thereafter submit a request to IDB for a Disbursement in order to reimburse said costs to the extent that same constitute Approved Infrastructure Costs. Prior to, and as a condition precedent to, each Disbursement, Electrolux shall submit to IDB the following documents (each submittal being a "Disbursement Request"):

(a) Lien Waivers and Claim Releases. Lien waivers (in a form attached hereto as Exhibit D) current through the end of the most recently ended calendar quarter. Such lien waivers shall be executed by each contractor, design professional and others performing work or providing labor, services and materials in connection with the Project releasing and waiving any and all payment claims, including, without limitation, lien claims, against the Project, the Premises, the Port, and the Public Authorities associated with any and all work, labor, services and materials performed or provided by such contractor, design professional and/or vendor through the effective date of the request for the then-current Disbursement, and any other similar documents and information as IDB may reasonably request.

(b) Soft Cost Backup. Copies of invoices and other reasonably requested documents to support the non-construction "soft cost" items contained in the requested Disbursement, if any.

(c) Conditional Acknowledgement of Disbursement. A signed acknowledgement by Electrolux that upon receipt of the subject Disbursement, the Public Funding Cap and the applicable funding source will have been drawn down in the amount of such Disbursement, plus all prior Disbursements.

IDB's review of Disbursement Requests shall be performed in conjunction with a construction consultant retained by IDB (the "Construction Consultant"). To the extent necessary to ensure compliance herewith, Electrolux shall provide IDB and the Construction Consultant with reasonable access to the Premises and all Project-related documents and communications in accordance with the terms of Section 5.3 herein. IDB and the Construction Consultant shall receive notice of all regularly scheduled weekly construction meetings and specially-held formal construction and design meetings which are scheduled on not less than ten business days advance notice.

SECTION 3.2. Documents Required prior to Disbursements. Prior to and as a condition to the payment of the first Disbursement, as well as any subsequent Disbursements, IDB must have received and approved the items utilizing its reasonable discretion (and obtained evidence of the satisfaction of the items) specified in this Section 3.2. These items must be fully executed where applicable, and all submissions which are not originals must be true and complete copies of these items and if requested by IDB, must be so certified by Electrolux:

(a) Plans and Technical Specifications for the Project. A then-current set of "for construction" plans and specifications for the Project (if any), which may be provided in either electronic or written form, and including, without limitation, any infrastructure improvements that may be subject to reimbursement hereunder, in each case as necessary to obtain necessary permits and licenses for construction ("Plans"). In furtherance of the foregoing, Electrolux covenants and agrees to provide updated Plans for the Project as same become available.

(b) Project Schedule. A then-current baseline projected construction schedule for the Project that incorporates projected interim and final completion dates, and illustrates the work of all trades. This schedule shall be compiled using Microsoft Project 2010 or some other similar software that is accepted in the industry and shall be updated as necessary during the Project. On a monthly basis, IDB shall be provided with all schedule updates that have been received by Electrolux and any schedules (interim or final) provided by Electrolux's Vendor(s) which materially affect the overall Project schedule.

(c) Insurance. Evidence that the insurance required under Section 5.8 is in effect.

(d) Resolutions, Formation, Authority and Good Standing Documents. The following items:

(i) Evidence of the due organization or incorporation and good standing of Electrolux, as certified by the Secretary of State of such party's state of organization or incorporation, from the appropriate authority of the State and any other jurisdiction where the failure to so qualify would have a Material Adverse Effect.

(ii) Evidence of the due authorization of this transaction by Electrolux, including, without limitation, corporate partnership or limited liability company resolutions specifically authorizing this transaction and incumbency certificates with original specimen signature for the officers signing this Agreement.

(iii) Evidence that Electrolux is duly authorized to do business in the State of Tennessee.

(iv) A duly enacted resolution of Electrolux's Board of Directors confirming that said board has selected Memphis as the site of its new manufacturing facility as generally described in the Recitals hereof, or a certificate of an officer of Electrolux certifying the same.

(e) Project Budget. The Project Budget, as further described in Section 4.1.

(f) Permits and Governmental Approvals. Evidence that Electrolux has obtained or has commenced and is diligently pursuing the application process necessary for all Permits, including building permits, and all Governmental Approvals necessary for construction of the Project in accordance with the Plans.

(g) Retainage. Proof, including fully executed escrow agreements, indicating that Electrolux has complied with the Tennessee Prompt Pay Act, TCA Section 63-34-101 *et seq.*, relative to retainage on any contract for the preparation of the site or construction of the building thereon, to the extent applicable.

(h) Contractor's Safety Plan. A copy of the general contractor's written plan for workplace safety in connection with the Project.

(i) Evidence of Contractor Licensure and Design Professional Registration. Written evidence that any and all Vendors of any tier and all design professionals performing work on the Project are duly licensed and registered to perform their respective scopes of work under Tennessee law.

(j) Certified Payment Applications. Payment application(s) certified by the project architect of record that, based on its review, all work has been performed in accordance with the Project plans and specifications as of the date of the then-current Disbursement request.

(k) Certificate of Compliance with Purchasing Policies and Procedures. Written certification from Electrolux that Electrolux has materially complied with, and is in material compliance with, the IDB Purchasing Policies and Procedures, any State requirements, and this Agreement as of the date of the then-current Disbursement request.

SECTION 3.3. General Terms and Conditions for Disbursements. Each Disbursement shall be subject to the following general terms and conditions precedent:

(a) No Event of Default. The representations, warranties and covenants of Electrolux shall be true and correct in all material respects on and as of the date of such Disbursement and no Event of Default shall have occurred and be continuing.

(b) Receipt of Funds. IDB's receipt from the respective Public Authorities of all or such portion of the amounts set forth in Section 6.1 of the Site Agreement sufficient to fund the requested Disbursement.

(c) Material Adverse Effect. No event or series of events shall have occurred which has resulted in a Material Adverse Effect.

(d) Notice, Frequency and Amounts. Electrolux and IDB shall meet at least every two calendar weeks to review all Disbursement Requests. No later than seven calendar days prior to such meeting, Electrolux shall submit all Disbursement Requests and supporting documentation required pursuant to Section 3.1 to the IDB for review. IDB shall either approve or reject all such Disbursement Requests within seven (7) calendar days following such meeting. In the event of rejection, IDB shall immediately upon such determination notify Electrolux in writing, which notice shall identify, with specificity, the reasons for such rejection. No such request shall be rejected if it complies with the terms and conditions of this Agreement. For all Disbursements to be funded with funds received from the City or County, IDB shall pay the same to

Electrolux within fifteen (15) calendar days from such meeting unless rejected as provided above. For all Disbursements to be funded with funds received from the State, IDB shall pay the same within thirty (30) days from such meeting unless rejected as provided above.

(e) Purposes and Payees. Electrolux shall only be entitled to Disbursements for payment of Approved Infrastructure Costs as evidenced by the documentation required pursuant to Section 3.1. The amount of any requested Disbursement shall not exceed the cost of work in place, and/or other amounts actually paid or payable by Electrolux for Project Costs. To the extent that the IDB and its Construction Consultant determine, in the exercise of their reasonable judgment, that any of the Project Costs sought to be reimbursed under a Disbursement Request do not constitute Approved Infrastructure Costs because they do not reflect the Project Budget as approved, such portion of the requested funds shall be withheld from the Disbursement, and held by IDB pending a final determination of whether such Project Costs constitute Approved Infrastructure Costs.

(f) Casualty or Condemnation. No casualty has occurred or condemnation proceeding has been initiated, which in IDB's reasonable discretion, could have a Material Adverse Effect.

(g) Compliance with IDB Purchasing Policies. Electrolux shall conduct its bidding and procurement for the Project in accordance with the Purchasing Policies and Procedures attached hereto as Exhibit E. Upon reasonable request Electrolux shall make available to the IDB and State for inspection at Electrolux's place of business or the Premises documentation evidencing compliance with such Purchasing and Contracting Policies and Procedures and any State requirements.

(h) Material Adverse Effect. No event or series of events shall have occurred which has resulted in the invalidation of any of the facts, documents or circumstances required to meet any of the conditions set forth in Article III or otherwise has resulted in a Material Adverse Effect.

(i) Prevailing Wage. All construction contracts in connection with the Project require compliance with the prevailing wage laws as provided in TCA Section 12-4-401, *et seq.*

(j) Payment of Disbursement. IDB expressly reserves the right to object to or question, and to seek reimbursement of and recover, any sums that it disburses to Electrolux should it be later determined that all or part of any such request for Disbursement was approved, or that any subject of such request was originally determined by the IDB to be an Approved Infrastructure Cost, as a result of Electrolux's negligence or an intentional or negligent misrepresentation made by Electrolux; provided, however, that IDB shall be barred from seeking recovery of any Disbursement(s) improperly or incorrectly made once six years have elapsed after the date of Start of Production.

(k) State Grant Agreement. Upon the termination of the State Grant Agreement for any reason other than an Event of Default hereunder by Electrolux, Electrolux may either: (1) elect, upon thirty (30) days written notice to IDB, to fund that portion of the Project that was to be paid with Public Funds originating from the State, in which event the IDB shall continue to make Disbursements of the portion of the Public Funds provided by the City and County pursuant to the terms of this Agreement, or (2) terminate this Agreement by written notice to IDB and Port, whereupon it may, but shall not be obligated to, remove all Improvements constructed, purchased or paid for solely with Electrolux's funds ("Electrolux Funded Improvements") within one hundred eighty (180) calendar days from the exercise of such rights, in which event IDB shall have no further obligation from the date on which notice of termination was provided by Electrolux to make any further Disbursements to Electrolux (other than the obligation to make Disbursements for Disbursement requests submitted prior to the date of such notice of termination). Upon any such removal, Electrolux shall restore the condition of the Premises to a safe and sanitary condition and repair any damage associated with the installation or removal of the Electrolux Funded Improvements. Except for claims associated with the State's termination of the State Grant Agreement arising from the underlying breach of this Agreement by, or the negligence or willful misconduct of, IDB, City, County and/or Port, Electrolux waives any and all damages, claims or causes of action against IDB, City, County and/or Port associated with any termination of the State Grant Agreement by the State.

(l) Documentation. Electrolux shall maintain documentation for the basis of each procurement for which reimbursement is sought under this Agreement.

SECTION 3.4. Open Conditions. In the event that IDB makes any Disbursement without requiring Electrolux to have satisfied each and every condition set forth in Sections 3.2 or 3.3 or otherwise (it being understood that IDB shall have no obligation to do so), then each and every condition not so satisfied at the time of the funding of any Disbursement shall be a condition to the funding of the next subsequent Disbursement (and each Disbursement thereafter) unless and until Electrolux shall have satisfied such condition or IDB shall have expressly agreed in writing to permanently waive such condition.

SECTION 3.5. Compliance with M/WBE Goals. It is the IDB's desire and goal that minority and women business enterprises ("M/WBE") business participation be utilized to the extent possible in connection with the Project. Any and all M/WBE business participation requirements shall be the exclusive obligation of the IDB; provided however, Electrolux acknowledges and agrees that it will consider in good faith any qualified M/WBE and local vendors that are submitted by IDB.

SECTION 3.6. Procurement; Purchasing Policies. IDB and Electrolux acknowledge and agree that they shall work cooperatively in good-faith to select all Vendors for the Project, and to determine all terms and conditions related thereto, taking into account the specific needs of Electrolux and IDB. In the event that the parties do not reach unanimous agreement regarding the final selection of a Vendor, or the terms and conditions of the engagement of such Vendor, Electrolux shall have final decision making authority regarding the same.

SECTION 3.7. Completion; Deliverables. At Completion, Electrolux shall deliver to IDB the following items, each to be satisfactory to IDB in the exercise of its reasonable, good-faith discretion:

(a) Certifications from Electrolux, its general contractor, or construction manager, architect and civil engineer that the Project has been completed as set forth in Section 5.1(b);

(b) Copies of the certificate of occupancy or equivalent, and all other licenses and permits necessary for the use and occupancy of the Premises; and

(c) Final lien waivers from all contractors, subcontractors and materialmen.

Nothing contained herein shall abridge Electrolux's obligation to maintain the insurance set forth herein through the commencement of the PILOT Lease or to keep the Premises and the Project free of liens through the Start of Production.

SECTION 3.8. Exempt Transactions. Notwithstanding anything in this Agreement to the contrary, the terms, conditions and obligations set forth in this Agreement shall only apply to the extent that payments made under such Vendor Contracts are to be reimbursed, in whole or in part, through one or more Disbursements, and such payments shall vest legal and equitable ownership of said Improvement with the IDB or Port, as appropriate. To the extent that no payments made under a given Vendor Contract are to be reimbursed by Disbursements, Electrolux is hereby authorized to execute all contracts, agreements, purchase orders, and related documents that Electrolux deems necessary or appropriate in its sole discretion. IDB, Port and Electrolux covenant and agree to take all actions reasonably required to effectuate the transfer of all Improvements associated with the Project, regardless of whether such Improvements are paid in whole or part by any Disbursement, to Port, including but not limited to the execution of any and all deeds, bills of sale or other conveyance documentation. In no event shall IDB or Port have direct liability under any Vendor Contracts.

ARTICLE IV PROJECT BUDGET

SECTION 4.1. Project Costs and Project Budget.

(a) Project Costs. Electrolux shall be solely liable to its Vendors for all Project Costs and will be reimbursed by IDB, subject to the terms, conditions and limitations hereof, to the extent of the Public Funding Cap, only for Approved Infrastructure Costs related to the Project. It is acknowledged and agreed that the costs of obtaining the Facility Site and Distribution Site are expenses of the IDB which shall not count against the Public Funding Cap and shall not be considered Project Costs. Electrolux shall pay all Project Costs as they become due and owing, notwithstanding that IDB may not be obligated to make a Disbursement hereunder to reimburse such costs or that the amount of any particular Disbursement may be insufficient to pay such costs, in which case Electrolux shall pay from its own funds any deficiency. IDB shall reimburse Electrolux, through Disbursements, for any and all Approved Infrastructure Costs up to the amount of the individual and cumulative Public Funding Cap(s).

(b) Project Budget. The Project Budget shows (i) the Project Costs as presently determined or estimated, and (ii) the IDB's determination of which Project Costs are Approved Infrastructure Costs and the appropriate funding source(s) for each such cost. It is understood that the initial Project Budget provided by Electrolux is preliminary and will be updated monthly as such Project Budget changes. In addition, Electrolux shall provide an updated Project Budget at such time as "for construction" drawings have been issued. Any modifications to the Project Budget that increase a line item in excess of 25% or which materially modify the funding source of any Disbursement(s) must be approved in advance by IDB, which shall not be unreasonably withheld, conditioned or delayed (it being understood that any line item increases of less than 25% or which do not materially modify a funding source are hereby deemed approved by the IDB). Electrolux shall not add any new material line items to the Project Budget that are to be paid for with Public Funds without the approval of the IDB, which shall not be unreasonably withheld, conditioned or delayed. Absent such approval of any such modification(s), IDB will not be required to make any Disbursement(s) pursuant to the modified Project Budget, and will continue to make Disbursements pursuant to and consistent with the most recent IDB-approved Project Budget.

ARTICLE V ADDITIONAL TERMS & CONDITIONS

SECTION 5.1. Construction; Completion; Conveyance.

(a) Electrolux, IDB and Port agree to prosecute construction of the Project with good faith and diligence so that the Project shall achieve timely Completion in accordance with the Plans no later than the expiration of the Ramp-up Period unless the time to complete is extended in writing by IDB, which extension will not be unreasonably withheld, conditioned or delayed.

(b) For purposes of this Agreement the "Completion" of the Project shall mean the point in time when construction of the Project has been completed in accordance with the Plans and all applicable Laws (as evidenced by the delivery of the documents and the satisfaction of the undertakings required by Section 3.7 of this Agreement) and with all applicable Governmental Approvals.

(c) Immediately upon the Start of Production, Port and/or IDB, as applicable, shall convey title to the Premises and Distribution Site to Electrolux for no additional consideration as a contribution to the capital of Electrolux as defined by Internal Revenue Code § 118 and related regulations. If Electrolux desires for the Project to participate in the payment in lieu of tax program referenced in Section 4.2(a) of the Site Agreement, Electrolux shall then convey the Premises to IDB and thereafter the IDB and Electrolux shall enter into the PILOT Lease in the form attached hereto as Exhibit B, as well as the Personal Property PILOT Lease, as more specifically referenced in the PILOT Lease. All conveyances of real property pursuant to this Section 5.1(c) (inclusive of all improvements, fixtures, rights, privileges, appurtenances and hereditaments thereto), shall be made subject only to the Permitted Encumbrances. IDB shall be responsible for

all costs and expenses in connection with the conveyances set forth in this Section 5.1(c), including but not limited to all recording costs, applicable transfer taxes, if any, and the cost of the Title Policies (as set forth in Section 9.3 herein), and the same shall not be part of the Public Funding Cap.

SECTION 5.2. Rights against Contractors; Warranties.

(a) Electrolux covenants and agrees that it will use its commercially reasonable efforts to insure that the construction of the Project is completed diligently in a good and workmanlike manner in accordance with the terms of the relevant Vendor Contract, including the correcting of any defective work. Electrolux may, from time to time, in its own name as the direct party to the Vendor Contracts, take such action as may be necessary or advisable, as determined by Electrolux, to insure the construction of the Project in accordance with the terms of the appropriate Vendor Contract and the installation of all equipment in accordance with any applicable Vendor Contract pertaining thereto. If necessary for Electrolux to prosecute any claims against any third party related to work or services performed at the Facility Site prior to the transfer of title to the Facility Site to Electrolux, and automatically and immediately upon such transfer, Port and IDB hereby assign to Electrolux (i) all warranties and guaranties of any and all contractors, subcontractors, suppliers, or architects for the furnishing of labor or material or supervision in connection with the construction of the Project or any part thereof, and (ii) any and all rights or causes of action against any Vendor in connection with any Vendor Contract or any improvements constructed in connection therewith, as well as all warranties and guaranties set forth in (i) above, in each case to the extent the foregoing inured to the benefit of Port or IDB. If requested, Port and/or IDB, as appropriate, will execute and deliver instruments of assignment to Electrolux to accomplish the foregoing.

(b) In the event of default of any contractor or subcontractor under any Vendor Contract, Electrolux shall, at its expense, either in its own name as the direct party to such Vendor Contract, or in the name of Port or IDB, if necessary, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, surety, or supplier which Electrolux deems reasonably necessary, and in such event Port and IDB hereby agree to cooperate fully with Electrolux and, at Electrolux's expense, to take all action necessary to effect the substitution of Electrolux for Port or IDB, if necessary, in such action or proceeding. Electrolux shall indemnify Port and IDB from all claims, damages, liability, reasonable attorney's fees actually incurred, and court costs if Electrolux shall prosecute or defend any such action or proceeding or take any other action in Port or IDB's name. Port and IDB shall promptly remit any net amounts recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing to Electrolux. Notwithstanding the foregoing, neither Port nor IDB shall undertake any such action in connection with the above, nor advance funds related thereto, without the prior written request by Electrolux.

SECTION 5.3. Inspection; Access to Books and Records. During normal business hours, and upon reasonable prior written request, Electrolux shall permit IDB and its consultants to enter the Premises to view the condition of the Premises and the Project and with access to

Electrolux's financial and other records related to the Project to the extent reasonably necessary to determine compliance with this Agreement and the State Grant Agreement and shall permit them to make copies of same; provided, however, to the extent any such copies contain information considered to be confidential or proprietary to Electrolux, such confidential or proprietary portions shall be redacted from such copies and shall only be unredacted in the event legally required (as reasonably determined by legal counsel to the IDB) to prove compliance with this Agreement or any State auditing requirements. IDB and its consultants shall cooperate with Electrolux in taking reasonable steps and precautions to minimize interference with the activities at the Premises in connection with any such inspection and to preserve Electrolux's Confidential Information from unnecessary disclosure. All inspections by IDB and its consultants shall be for the sole benefit of IDB only. Neither IDB nor its consultants assumes any liability to Electrolux or any other Person by reason of IDB's or its consultant's inspections. Neither Electrolux nor any other person may rely on such inspections for any purpose (including stage of completion, adequacy or workmanship, compliance with Governmental Approvals and Covenants, Conditions and Restrictions, conformance with the Plans, or other matters related to design, construction and operation of the Project). Neither IDB's nor its consultant's inspection of an item pursuant to this Section 5.3 shall result in any waiver of IDB's rights in the event such item does not conform with this Agreement. Electrolux shall keep and maintain the financial and other records related to the Project for a period of six (6) years following the Start of Production.

SECTION 5.4. Mechanics' Liens; Release of Lien Bonds.

(a) Neither Port, IDB nor Electrolux shall do or suffer to be done anything whereby IDB's and/or Port's interest in and to the Premises or any part thereof may be encumbered by any mechanics' or materialmen's statutory liens or any similar lien created by statute or at common law, and if whenever and as often as any mechanics' or materialmen's lien or similar lien is filed against the said Premises, or any part thereof, purporting to be for or on account of any labor or materials or services furnished in connection with any work in, or about the Premises done by, for, on or under the authority of Electrolux or anyone claiming by, through or under Electrolux, Electrolux shall promptly procure the record satisfaction and release of same to Port and/or IDB's satisfaction.

(b) Notwithstanding any other provision of this Agreement, in no event shall Electrolux allow any lawsuit to enforce mechanic's or materialmen's liens or such other statutory or common law liens to exist against the Premises. Electrolux shall discharge or remove any such lien by bonding or otherwise promptly on notice by IDB or Port to do so. Notwithstanding the foregoing, upon the filing of a lawsuit to enforce any mechanics' or materialmen's liens, Electrolux shall, in its discretion, either contest or pay any such mechanics' or materialmen's lien or any such other statutory or common law lien claim filed against the Premises, or any part thereof, and Port and IDB hereby authorize Electrolux to act on Port and IDB's behalf as necessary to so contest, provided that Electrolux notifies Port and IDB in writing of its intention so to do, diligently prosecutes any such contest, files a statutory or other bond sufficient to remove the lien from the Premises or otherwise provides reasonably satisfactory assurance to Port and IDB securing any payment of any amounts determined to be due by Electrolux, at all times effectually stays or prevents any official or judicial sale of the Premises under

execution or otherwise, and pays or otherwise satisfies any judgment adjudicating or enforcing such contested mechanics', materialmen's or other lien, and thereafter promptly procures record satisfaction and release thereof reasonably satisfactory to Port and IDB.

(c) Notwithstanding any other provision of this Agreement, in the event that any action to enforce any mechanics' or other materialmen's liens arises due to Port and/or IDB's failure to comply with any provision of this Agreement, then Port and/or IDB, as appropriate, shall be responsible for all costs and expenses in connection with Electrolux's contest of such action, including but not limited to the cost of any statutory or other bond, satisfaction of any judgment and Electrolux's reasonable attorney's fees.

SECTION 5.5. Compliance; Operation. Electrolux shall maintain material compliance with all Governmental Approvals and all applicable Laws pertaining to the construction, equipping, ownership, use, management, operation and lease of the Premises and each portion thereof. Other than those Permits and Governmental Approvals, if any, which Electrolux is required to obtain and pay for on or prior to the times set forth in Sections 3.2 and 3.3, Electrolux shall obtain all Permits and other Governmental Approvals on a timely basis. Electrolux shall perform, in all material respects, the Obligations.

SECTION 5.6. Transfers; Changes in Organization.

(a) Electrolux may, without the prior consent of Port or IDB, transfer (i) any of its rights under this Agreement or (ii) any of its interest, legal or beneficial, in any part of the Premises (each, a "Transfer") to any subsidiary or entity related to Electrolux in which Electrolux or its parent entity or entities own a majority of the voting equity; provided, however, that no Transfer shall reduce or terminate any of the obligations of Electrolux, and that any Transfer or subletting shall be only for the purposes set forth in the Application and for only lawful purposes.

(b) Except as set forth in Section 5.6(a) above, Electrolux may not Transfer (i) any of its rights under this Agreement or (ii) any of its interest, legal or beneficial, in any part of the Premises, except as may be consented to by IDB in writing, such consent not to be unreasonably withheld, conditioned or delayed.

SECTION 5.7. Notification. Electrolux shall promptly notify IDB in writing upon learning of the occurrence of: (a) any Event of Default; (b) any event which materially and adversely affects the ability of Electrolux to perform any of its respective Obligations hereunder, or (c) any litigation or other proceeding filed or threatened in writing against Electrolux in connection with the Project or the Premises that may materially interfere with the construction or operation of the Project. Further, Electrolux shall provide IDB with the opportunity to inspect and copy the following documents at Electrolux's place of business or the Premises, within a commercially reasonable time following original receipt by Electrolux: construction and design meeting minutes for meetings described in the last sentence of Section 3.1 hereof; payment applications certified by the architect; material written communications with code enforcement; proposed change orders (that are material to the Project Budget); and notices of lien and bond claims. Notwithstanding the foregoing, the rights of inspection and copy herein are in addition

to, but shall be subject to the same confidential and proprietary restrictions as, those contained in Section 5.3 hereof.

SECTION 5.8. Insurance Requirements. Electrolux, at its sole cost and expense, shall insure and keep insured the Premises and the Project against such perils and hazards, and in such amounts and with such limits, as set forth on Exhibit G, up until the Start of Production and through any applicable statutory limitation and repose periods for potential causes of action. It is understood that, except as otherwise set forth in Article VI herein, such insurance proceeds shall first be made available for the repair or restoration of the Premises to the extent that such proceeds relate to property damage. Any deductibles paid shall not be an Approved Infrastructure Cost.

SECTION 5.9. Electrolux's Indemnities. To the fullest extent permitted by law, Electrolux shall indemnify, protect, defend and hold IDB and Port harmless (each an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all actions, suits, losses, liabilities, damages, claims, costs and expenses of any kind whatsoever (including reasonable attorney's fees and disbursements) paid, incurred or suffered by or asserted against the relevant Indemnified Party (whether or not such Indemnified Party is a party to the action for which indemnification is sought) as a result of or arising out of:

(a) Electrolux's use or occupancy of the Project or the Premises including, without limitation, any subsurface, environmental or climatic conditions encountered upon, in or under the Premises related to such use or occupancy;

(b) any injury, damage or liability to persons or property at or about the Premises or otherwise occurring in connection with the construction of the Project or the ownership, operation or maintenance of the Premises;

(c) any claim of defect, or any damages arising out of defective work or defective design, associated with the Project by any party or entity, and

(d) mechanic's liens or bond claims whensoever arising and any assertion of any claim thereunder, and any and all payment claims by any contractor of any tier, design professional, or any other Vendor performing work or providing labor, services or materials in connection with the Project.

If and to the extent that the foregoing undertaking may be unenforceable for any reason, Electrolux hereby agrees to make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities that is permissible under applicable Law. Electrolux acknowledges that the Indemnified Parties may defend any matter covered by the above indemnification by counsel of the Indemnified Party's choice, and the costs of such defense (including reasonable attorney's fees) are part of the costs covered by the indemnity. The foregoing indemnification obligations shall survive the termination of this Agreement, but shall only apply to the extent the event triggering the indemnification obligation hereunder occurred between the Effective Date and the Start of Production. The foregoing indemnity obligations shall not apply to the extent arising from (a) breach by either Port or IDB of this Agreement or the Site Agreement or any other agreement related thereto to which Port and/or IDB is a party, or

(b) the negligence or willful misconduct of Port or IDB, or any of their respective officers, directors, employees or agents.

SECTION 5.10. IDB a Third Party Beneficiary of Contracts, Assignee of Warranties.

(a) For all Vendor Contracts for construction at the Premises which Electrolux enters as a direct contracting party and which are paid for in whole or in part using Public Funds, Electrolux shall ensure that such contracts stipulate that prior to the Start of Production: (1) IDB is an intended third party beneficiary thereof, (2) that such contracts are freely assignable by Electrolux to IDB, (3) that unless and until such contract(s) are in fact assigned to IDB and IDB accepts such assignment, IDB shall have no liability under such contracts, and (4) that IDB's liability under such contract(s) shall only be for work, labor, services or materials performed or furnished after the date of IDB's acceptance of such assignment. Electrolux shall ensure that any entity warranting any labor, service, material, equipment or product in connection with the Project consents to the assignment by Electrolux to IDB of any warranty rights relative to such labor, service material, equipment or product. Electrolux shall require its Vendors of all tiers to execute contracts with their sub-tier Vendors that contain similar requirements.

(b) Upon IDB's written request, Electrolux shall assign its rights under any Vendor Contract which will be paid for in whole or in part using Public Funds, or warranty related thereto, to IDB provided, however, that IDB shall not request such assignment unless an Electrolux Event of Default has occurred. This assignment obligation shall automatically cease on the Start of Production.

SECTION 5.11. Right to Farm and Farming Proceeds. As of the execution hereof, all farming activities at the Facility Site have concluded, and may not be resumed without the express written consent of Electrolux. Port shall have the right to farm, or allow a third party to farm on the Distribution Site, provided that any such farming operations and any lease or other contracts in connection therewith entered into by the Port after the date of this Agreement shall be terminable no later than one hundred eighty (180) days after the date that Electrolux gives Port written notice of its intent to develop the Distribution Site.

ARTICLE VI CASUALTY AND CONDEMNATION

SECTION 6.1. Casualty.

(a) Minor Casualty. If a minor part of the Premises shall be destroyed or damaged, Electrolux shall promptly notify IDB and at Electrolux's expense, Electrolux shall promptly and diligently rebuild, restore, replace, and repair the same to such condition as it shall deem reasonable in view of the nature of the damage and the then intended use of the Premises by Electrolux. IDB shall assign to Electrolux (to the extent not previously paid to IDB) and/or shall pay to Electrolux (to the extent the same have previously been paid to IDB) all insurance proceeds arising out of such damage or destruction

(b) Substantial or Complete Casualty. If there is a complete or substantial casualty affecting any or all of the Premises such that restoration thereof cannot be accomplished within ninety (90) business days from the date of damage (to be determined in the sole judgment of Electrolux), Electrolux shall have the right to either restore the Premises as provided in Section 6.1(a), or terminate this Agreement. Electrolux shall give IDB prompt written notice of the occurrence of any substantial or complete casualty affecting any or all of the Premises, or any portion thereof. In the event that Electrolux elects to: (i) restore the Premises, IDB shall assign to Electrolux (to the extent not previously paid to IDB) and/or shall then pay to Electrolux (to the extent the same have previously been paid to IDB) all insurance proceeds arising out of such damage or destruction, and Electrolux shall promptly repair and rebuild the Premises in accordance with standards contained in Section 6.1(a) above; or (ii) terminate this Agreement, IDB shall be entitled to all insurance proceeds, less that portion received as compensation for those Improvements, or portions thereof, constructed, purchased or paid for with Electrolux's funds, which shall promptly be assigned and/or paid to Electrolux.

SECTION 6.2. Condemnation. If title to, or the use or control of, all or substantially all of the Premises shall be taken by the exercise of the power of eminent domain or condemnation, or if such title, use, or control of a substantial part of the Premises shall be so taken as results in rendering same unsatisfactory to Electrolux for the purposes for which the same was used immediately prior to such taking or condemnation or similar use (to be determined in the sole judgment of Electrolux), Electrolux shall have the right to terminate this Agreement. If all or any part of the Premises is taken by the exercise of the power of eminent domain or condemnation, IDB and/or Port shall be entitled to receive the entire award for the taking, less that portion received as compensation for those Improvements, or portions thereof, constructed, purchased or paid for with Electrolux's funds, which shall promptly be assigned and/or paid to Electrolux. To the extent IDB and/or Port receive compensation for any Improvements, or portions thereof, constructed, purchased or paid for with Electrolux's funds, they shall immediately remit same to Electrolux.

ARTICLE VII EVENTS OF DEFAULT

SECTION 7.1. Events of Default - Electrolux. Each of the following shall constitute an "Event of Default" by Electrolux under this Agreement:

(a) Non-Payment. Electrolux's failure to pay any Vendor in breach of any Vendor Contract without justification and without the prior consent of IDB, which continues for ten (10) days after Electrolux's receipt of notice thereof from IDB or Port.

(b) Representations/Certifications. Any representation or certification made by Electrolux in connection with this Agreement is or becomes materially false or misleading at any time when such representation or certification is required to be operative.

(c) Other Breaches. Electrolux materially breaches or defaults under any other term or provision in this Agreement, and such breach or default continues for sixty (60) days after receipt of notice thereof by the IDB or Port;

(d) Bankruptcy, Insolvency, etc. Electrolux:

(i) becomes insolvent;

(ii) applies for, consents to, or acquiesces in, the appointment of a trustee, receiver, sequestrator or other custodian for itself or a substantial part of its property, or makes a general assignment for the benefit of creditors;

(iii) in the absence of such application, consent or acquiescence, permits or suffers to exist the appointment of a trustee, receiver, sequestrator or other custodian for itself or for a substantial part of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days, provided that IDB is hereby expressly authorized to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend its rights under this Agreement; or

(iv) permits or suffers to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of Electrolux, and, if any such case or proceeding is not commenced by Electrolux, such case or proceeding shall be consented to or acquiesced in by Electrolux, or shall result in the entry of an order for relief or shall remain for 90 days undismissed, provided that IDB is hereby expressly authorized to appear in any court conducting any such case or proceeding during such 90-day period to preserve, protect and defend its rights under this Agreement.

(e) Suspension of Business; Dissolution. Electrolux suspends the transaction of business for a period in excess of ninety (90) consecutive business days, or otherwise dissolves or terminates its existence;

(f) Lien. Any Lien or notice of Lien of any kind (whether for the performance of work, the supplying of materials, a judgment lien, a tax lien, or otherwise) is filed or served against any part of the Premises, and Electrolux fails either to satisfy such Lien or to comply with the provisions respecting contesting or bonding off Liens set forth in Section 5.4 above within the earlier of the time necessary to stay enforcement of the Lien or thirty (30) days after the receiving notice of such Lien;

(g) Project Completion. Failure by Electrolux to achieve Completion of the Project within twenty-seven (27) months following the Effective Date (the "Completion Date") and Start of Production within thirty-three (33) months following the Effective Date (the "Start of Production Deadline"); provided however, this provision shall not apply in the event that, as of either such date, Electrolux has been and continues to undertake reasonable actions to achieve Completion and/or Start of Production as soon

as reasonably practical. Electrolux acknowledges and agrees that based on its actual knowledge as of the execution hereof, the above-referenced time periods are commercially reasonable, and Electrolux intends to meet the Completion Date and Start of Production Deadline.

(h) Impairment of Security, etc. Any surety bond or other security provided hereunder shall in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any obligor party thereto; or Electrolux shall, directly or indirectly contest in any manner such effectiveness, validity, binding nature or enforceability, and Electrolux fails to provide adequate replacement security that is satisfactory to the secured party in the exercise of its reasonable discretion.

Upon an Event of Default, this Agreement and/or IDB's obligation to make any Disbursements hereunder may be suspended by IDB. The notice and/or cure periods, if any, applicable to each of subparagraph (a) through (h) above is listed within each such subparagraph. If no notice or cure period is listed, then no notice or cure period shall apply. Further, if any event or circumstance occurs or exists which is an Event of Default under any one subparagraph (a) through (h) above, then an "Event of Default" shall exist regardless of whether any other term or provision of this Agreement provides for any, or for any different, notice, grace and/or cure period.

SECTION 7.2. Events of Default – Port and IDB. The IDB's or Port's failure to perform or otherwise comply with any of the terms of this Agreement, with such failure continuing sixty (60) days after Electrolux has given Port or IDB written notice of such default (unless another cure period is specifically provided herein), shall constitute an "Event of Default" by Port and/or IDB under this Agreement.

SECTION 7.3. Force Majeure. No failure, delay or default in performance of any obligation of Electrolux, IDB or Port shall constitute an event of default or breach of this Agreement to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the reasonable control and without negligence or wrongful conduct of such party, including but not limited to: action or inaction of any Governmental Entity (other than the Public Authorities); fire; flood; war; riot; theft; earthquake and other natural disaster (a "Force Majeure"). The party affected by such cause shall promptly take all reasonable actions to minimize the consequences of any such cause. A party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall give to the other parties prompt notice in writing of the facts which constitute such cause when the cause arises; and when the cause ceases to exist, shall give prompt notice thereof to the other parties.

ARTICLE VIII REMEDIES

SECTION 8.1. IDB and Port Remedies. Upon the happening of any Event of Default by Electrolux, the IDB and Port shall have the power to exercise the following remedies, including without limitation, the obtaining of injunctive relief to enforce any remedy described in this Section 8.1, which shall be the sole remedies of the IDB or the Port for any Event of Default

hereunder, concurrently or successively, without notice to Electrolux and without prejudicing any right to pursue any other remedy for Default set forth herein concurrently or subsequently, provided that the remedies provided for herein shall be exercised only to the extent necessary to make IDB whole and not to impose a penalty upon Electrolux:

(a) Termination of Obligations. IDB and Port may terminate at any time their respective obligations under this Agreement, including but not limited to the IDB's obligation to make Disbursements.

(b) Terminate Possession. Port may terminate the license granted in Section 2.6 above and enter upon, take possession of those portions of the Premises which are not Electrolux Funded Improvements (it being understood that any Electrolux Funded Improvements shall remain the property of Electrolux) and, at its option, use said portions of the Premises, any Plans, specifications or other documents reflecting the Project design, all material at the Premises and elsewhere ordered for or appropriated to the construction of the Project which are not Electrolux Funded Improvements, for the purpose of completing construction at the Premises.

(c) Assignment. In the Event of Default, at IDB's election, all of Electrolux's rights under all Vendor Contracts which are not Electrolux Funded Improvements, and warranties thereunder, shall be assigned to IDB by Electrolux pursuant to Section 5.10(b) hereof.

(d) Negligent/Intentional Misrepresentation. In the event that IDB makes any Disbursement hereunder, in whole or in part, in reliance upon a negligent or intentional misrepresentation made by Electrolux, or as the result of Electrolux's negligence, IDB shall be entitled to immediate repayment from Electrolux of the amount of such payment, plus interest at the maximum rate permitted by law.

To accomplish the foregoing purposes, IDB may, without limitation take any, or several, of the following measures: (a) act by itself or through its designees, representatives, agents, licensees or contractors; (b) pay or settle all bills and expenses incurred to accomplish the foregoing purposes; (c) use any of Electrolux's plans, specifications and other construction design documents and utilize Electrolux's contractors, design professionals and construction vendors to complete construction under an assignment of Electrolux's rights under each of such contracts; (d) make such corrections, additions, changes and modifications in the Plans as may be reasonably necessary or desirable in the opinion of IDB to complete the Project in substantially the manner contemplated in the Plans; (e) execute all applications, certificates or instruments in the name of Electrolux which in the opinion of IDB may be or are required by any Governmental Entity or any contract; (g) prosecute and defend all actions or proceedings affecting the Premises; (h) do any and every act which Electrolux might do in its own behalf related to the foregoing; and (i) subject to the restrictions of this Section 8.1 do any and every act which IDB deems necessary or desirable to accomplish the construction of the Project (minus the Electrolux Funded Improvements). All funds advanced by IDB pursuant to this Section 8.1 shall be expenditures to which the terms of Section 10.6 below apply.

In the event Port and/or IDB elect to exercise their rights hereunder upon the occurrence of an Event of Default, within one hundred eighty (180) calendar days from the exercise of such rights Electrolux may remove from the Premises any Electrolux Funded Improvements. Port and IDB shall take all actions reasonably required to effectuate the transfer of all Electrolux Funded Improvements to Electrolux, including but not limited to the execution of any and all deeds, bills of sale or other conveyance documentation. Upon such removal, Electrolux shall restore the condition of the Premises to a safe and sanitary condition and repair any damage associated with the installation or removal of the removed Electrolux Funded Improvements.

It is specifically acknowledged and agreed that no incentive, inducement or other benefit granted to Electrolux under any provision of this Agreement shall be subject to any recapture, claw back, refund or similar remedy in the event of any Event of Default by Electrolux, or any other failure by Electrolux to meet any obligation hereunder, and it is the express intent of the parties hereto that the remedies contained in this Section 8.1 are the sole remedies of the IDB or Port for the breach hereof.

Nothing contained in this Agreement shall be construed as a waiver of any rights or remedies IDB or Port may have at law or in equity for any acts or omissions of Electrolux which otherwise do not constitute an Event of Default hereunder.

SECTION 8.2. Electrolux Remedies. IDB and Port acknowledge and agree that Electrolux would be damaged irreparably in the event of an Event of Default by IDB or Port. Accordingly, IDB and Port agree that Electrolux shall be entitled to seek an injunction or injunctions to prevent or cure an Event of Default by Port or IDB (it being agreed that in such event, IDB and Port each waive all claims or defenses that an injunction is not an appropriate remedy for a Default hereof) and, to the extent permitted by law, to enforce specifically this Agreement (including the requirement of Port to file a claim under the Title Policies), and any of the terms and provisions hereof or thereof applicable to it in any action instituted in any court having jurisdiction over IDB or Port and the matter, in addition to any other remedy to which the Electrolux may be entitled, at law or in equity. The pursuit of or failure to pursue, injunctive relief by Electrolux does not constitute an election of remedies.

SECTION 8.3. Right to Remove Improvements Prior to Start of Production. Under no circumstance shall Electrolux or any assignee or transferee of the Property remove any Improvements from the Premises prior to the start of Production Date without the prior written consent of IDB; provided, however, that no such consent shall be required for the removal of Electrolux Funded Improvements. IDB specifically acknowledges and agrees that it shall grant its consent for such removal in the event any Improvements are damaged or in otherwise in need of repair and such repair cannot be efficiently conducted at the Premises, and Electrolux agrees to conduct such repair in a timely fashion and return the removed Improvements to the Premises in a commercially reasonable manner. In the event that Electrolux fails to comply with the terms of this Section 8.3, Electrolux agrees that the IDB and Port shall be entitled to immediately seek an injunction or injunctions to prevent or cure a violation of the terms of this Section 8.3 by Electrolux (it being agreed that in such event, Electrolux waives all claims or defenses that an injunction is not an appropriate remedy for a violation hereof) and, to the extent permitted by law, to enforce specifically the terms of this Section 8.3, in any action instituted in any court having jurisdiction over Electrolux and the matter, such being in addition to any other remedy to

which the IDB or Port may be entitled, at law or in equity. The pursuit of or failure to pursue, injunctive relief by IDB or the Port does not constitute an election of remedies.

SECTION 8.4. Option to Purchase. Notwithstanding anything in this Article 8 or the Agreement to the contrary, and in addition to any other rights or remedies available to Electrolux, in the event of either the termination of the State Grant Agreement (and Electrolux electing not to continue to fund the Project itself), or termination of this Agreement for any reason (each being a "Termination Event"), IDB and Port hereby grant Electrolux an option to purchase all or any portion of the Facility Site, Distribution Site and Improvements, as then existing as of Termination Event (the "Option"), upon the following terms and conditions:

(a) Electrolux shall notify IDB and Port, in writing, of its election to exercise the Option within sixty (60) days of the Termination Event (the "Option Notice").

(b) The Option Notice shall indicate the scope of the Facility Site, Distribution Site and Improvements Electrolux intends to purchase pursuant to the Option (the "Option Property").

(c) The purchase price for the Option Property shall be an amount equal to the total Disbursements of Public Funds actually made for said Option Property, and the value of that portion of the Facility Site to be acquired, if any, said value to be calculated pro-rata based upon the appraised value of the Facility Site as of the Effective Date.

(d) Upon payment of the purchase price, IDB and Port shall convey all its rights, title and interests in and to the Option Property to Electrolux, and shall execute any and all documentation necessary or appropriate to effectuate such conveyance.

(e) To the extent any Option Property is to be removed from the Premises, Electrolux shall be solely responsible for such removal and the same shall occur within one hundred eighty (180) calendar days from the exercise of the Option. Upon such removal, Electrolux shall restore the condition of the Premises to a safe and sanitary condition and repair any damage associated with the installation or removal of the removed Option Property.

It is the express intention of the IDB, Port and Electrolux that the provisions of this Section 8.4 shall survive termination of this Agreement.

ARTICLE IX TITLE/CONVEYANCE

SECTION 9.1. Conveyance Obligation. In consideration of Electrolux's entry into this Agreement and other good and valuable consideration (provided that such receipt shall not constitute an exercise of the rights set forth herein), the sufficiency and adequacy of which are hereby acknowledged and received, and commencing upon the date of this Agreement and continuing until the earlier of (a) Start of Production, or (b) one hundred and twenty (120) days after the expiration or termination of this Agreement for any reason whatsoever, including, without limitation, an Event of Default by Electrolux, and subject to the approval of IDB and Port in their sole discretion, Electrolux may request at any time for Port to convey all or a portion

of the Premises or Distribution Site to the Electrolux, in one or more series of transactions, subject to any then existing indebtedness created by or for the account of Electrolux, as permitted or provided for in this Agreement ("Conveyance Obligation"). In such event, Port shall promptly convey the Premises or Distribution Site, or applicable portion thereof, to Electrolux in accordance with the terms of Section 9.2 below. Electrolux shall exercise such right by providing written notice of such election to Port not less than thirty (30) days prior to the date of the desired reconveyance. Following Start of Production, Section 5.1(c) of this Agreement shall apply.

SECTION 9.2. Conveyance of Title. In the event of any conveyance of the Premises, Distribution Site or any portion thereof to Electrolux pursuant to any provision of this Agreement, Port shall convey title by a quitclaim deed thereto to Electrolux subject only to the Permitted Encumbrances and such additional encumbrances as may hereafter be created by or for the account of Electrolux, as permitted or provided for in this Agreement but Port shall not be required to give or assign better title than existed upon the commencement of this Agreement; provided, however, that Port acknowledges and agrees that Port has no authority or right to encumber the Premises, Distribution Site or Port's interest therein by any encumbrances other than (i) the Permitted Encumbrances, (ii) those which Electrolux has subsequently requested to be placed or caused to be placed against the Premises or Distribution Site, (iii) those which Electrolux has subsequently approved in writing to be placed against the Premises or Distribution Site, or (iv) those for which Electrolux is responsible under the express terms and provisions of this Agreement and which arise as the result of any default by Electrolux in the performance of its obligations under this Agreement. Any other conveyance or encumbrance (other than those described in clauses (i) through (iv) inclusive of the preceding sentence) by or for the account of Port shall in all respects be subject and subordinate to Electrolux's right to acquire title to the Premises and Distribution Site, free and clear of any such other conveyances or encumbrances, pursuant to Electrolux's exercise of the Conveyance Obligation set forth herein; and any such other conveyance or encumbrance, and any rights or liens created thereunder or arising therefrom shall be automatically terminated, released and extinguished by the conveyance of the Premises or Distribution Site to Electrolux by Port as provided for in this Section 9.2, and thereafter all such conveyances, encumbrances, rights or liens shall be void and of no further effect.

SECTION 9.3. Title Insurance; Assignment of Proceeds.

(a) On or prior to the Effective Date hereof, and at no cost to Electrolux, IDB and Port shall cause Chicago Title Insurance Company or such other title insurance company acceptable to Electrolux ("the "Title Company") to issue owner's policies of title insurance in favor of the Port (the "Title Policies"), insuring the Port's fee simple title in and to the Facility Site and Distribution Site. The Title Policies shall: (i) be in form and substance satisfactory to Electrolux, (ii) provide coverage in an amount of not less than \$90,000,000 for the Facility Site and \$40,000,000 for the Distribution Site, (iii) be subject only to the Permitted Encumbrances and such other title matters consented to by Electrolux pursuant to Section 2.5, and (iv) include such endorsements as Electrolux may reasonably request.

(b) Port does hereby convey, assign, transfer and set over unto Electrolux all of Port's right, title and interest in and to any and all proceeds (the "Proceeds") arising from or in connection with the payment of any claim filed under the Title Policies up to such amount paid by Electrolux in connection with the construction of the Project and that has not been paid or otherwise reimbursed through Disbursements. This Section 9.3(b) shall constitute notice and authorization to the Title Company to pay said Proceeds under the Title Policies to Electrolux, and Port shall obtain written confirmation from the Title Company, confirming to Port and Electrolux its receipt of notice of this present and absolute assignment of Proceeds and agreeing to disburse any Proceeds in accordance herewith. Port hereby covenants and agrees to comply with all the terms of the Title Policies and to promptly file a claim with the Title Company under the Title Policies upon Port's becoming aware of any such claim for which proceeds may be due Port in accordance with the requirements of the Title Policies. Port shall promptly send Electrolux copies of all claims filed under the Title Policies, or any notices, correspondence, or documents whether sent or received by the Port with respect to the claim or any related litigation. It is agreed that, in connection with any defects in title relative to the Premises, provided that the Port has met its obligations under this Section 9.3(b), Electrolux shall first pursue and exhaust any and all Title claims through the Title Policies prior to instituting any claim or action directly against IDB or the Port.

(c) Immediately upon the Start of Production, IDB and Port shall cause the Title Policies to be endorsed and/or re-issued (as appropriate) to insure Electrolux's fee simple title ownership of the Facility Site and Distribution Site, such insurance to conform in all respects to the requirements set forth in Section 9.3(a)(i) – (iv) above. The issuance, assignment or re-issuance of the Title Policies and all endorsements thereto shall be at no cost to Electrolux.

SECTION 9.4. Survival of Rights. All provisions of this Article IX shall survive the expiration or termination of this Agreement pursuant to any provision hereof (including, but not limited to, any termination pursuant to Article VII or Article VIII hereof).

ARTICLE X MISCELLANEOUS PROVISIONS

SECTION 10.1. Not an Agreement to Extend Credit. IDB's execution of this Agreement in no way constitutes or implies an agreement on the part of IDB or any other Governmental Entity to extend credit to Electrolux for any purpose.

SECTION 10.2. Entire Agreement. This Agreement and the Site Agreement constitute the entire agreement with respect to the construction of the Project. This Agreement constitutes the entire agreement between the parties hereto relative to IDB's obligation to make Disbursements in connection with the Project. There are no oral or written representations or agreements which modify or purport to modify the terms of such documents. This Agreement supersedes all prior agreements and understandings, written or oral, relating to IDB's obligations to reimburse Project Costs, including the Site Agreement (except those provisions of the Site Agreement that are specifically referenced herein, if any).

SECTION 10.3. No Waiver. No waiver, consent or approval of any kind by IDB, Port or Electrolux shall be effective unless contained in a writing signed and delivered by IDB, Port or Electrolux, as appropriate. Any waiver of any condition or covenant hereunder shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure by another party to take action on account of any Event of Default. Consent to any act or omission of another party will not be construed to be consent to any other or subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance. For greater certainty, IDB's making of any Disbursement prior to the fulfillment by Electrolux of one or more of the conditions set forth herein shall not constitute a waiver by IDB of any such condition for any future Disbursement, and IDB reserves the right to require the fulfillment of each such condition prior to making any subsequent Disbursement. No failure by a party to exercise, or delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. Without limiting the foregoing, no Disbursement by IDB after an Event of Default shall constitute a waiver of any of IDB's remedies or shall oblige the IDB to make any further Disbursements nor shall any such Disbursement preclude IDB from declaring an Event of Default and pursuing its remedies under this Agreement.

SECTION 10.4. Amendments. No amendment, modification, discharge or other change in any of the terms of this Agreement shall be valid unless in writing and signed by the party against which enforcement is sought, and then only to the extent specifically set forth therein.

SECTION 10.5. Confidentiality. Port and IDB hereby acknowledge and agree that during the course of their participation in the Project they may from time to time become aware of information which Electrolux deems confidential, proprietary and/or trade secrets of Electrolux ("Confidential Information"). As such, Port and IDB, each on behalf of itself and its respective officers, employees, directors, professional advisors, successors and assigns ("Representatives"), shall make good faith, commercially reasonable efforts to protect Electrolux's Confidential Information and shall not disclose to any third party any Confidential Information, except to the extent required by law. Upon the earlier of (i) the Port or IDB receiving a request for disclosure of any Confidential Information, or (ii) legal counsel for the Port or the IDB determining that such disclosure is required by law, Port or IDB, as applicable, shall provide Electrolux with written notice as soon as practicable thereafter of such request or determination.

SECTION 10.6. No Third Party Benefits. By their execution of this Agreement, IDB, Port and Electrolux do not intend to create any rights to enforce this Agreement of any kind in any third parties other than for entities that are to be indemnified hereunder, to the extent of such indemnity, or against whom claims are released or waived hereunder, to the extent of such waiver or release. IDB shall not be deemed to be in privity of contract with, or secondarily liable to, any contractor, subcontractor or other provider of services or materials to the Premises, nor shall any payment of funds directly to any such Person be deemed to create any third-party beneficiary status or recognition of the same by IDB. Without limiting the foregoing, IDB shall not owe any duty whatsoever (i) to any claimant for labor performed or material furnished in connection with the construction of the Project to apply any undisbursed portion of the public

monies available to the payment of any such claim or to exercise any right or power of IDB hereunder, or (ii) to any purchaser, licensee, tenant, invitee or user of all or any part of the Premises. Any approval or inspection of the Plans, any other documents or any part of the construction of the Project or any other action taken by IDB or any of their respective consultants shall be made exclusively for the benefit of IDB, and no third party shall have any right to rely thereon in any way.

SECTION 10.7. Authority. Each of IDB, the Port and Electrolux have the full power and authority to make and execute this Agreement, and the obligations required hereunder to be performed by IDB and the Port have been duly and validly authorized and approved by all necessary action on the part of IDB, the Port and their respective governing bodies. To the knowledge of the IDB and Port following reasonable inquiry, neither the execution and delivery of this Agreement nor the performance of the obligations hereunder will constitute a violation or breach of the agreements, documents or Laws under which the IDB or the Port are governed.

SECTION 10.8. All Disbursements Obligatory and Secured. Any and all disbursements, payments and amounts expended by IDB pursuant to this Agreement shall, as and when advanced or incurred: (a) be deemed obligatory for IDB, regardless of the Person to whom such amounts are furnished, and (b) satisfy dollar for dollar the obligations of IDB hereunder.

SECTION 10.9. Notices and Requests for Consent of Approval. Except for any notice required under applicable Law to be given in another manner, any notice or request for consent or approval that IDB, the Port or Electrolux may desire or be required to give under this Agreement to any other party hereto shall be in writing and shall be deemed to have been properly given, served and received (i) if delivered by hand, when delivered, (ii) if sent by reputable overnight courier (effective the business day following delivery to such courier) and (iii) if mailed by United States certified or registered mail, postage prepaid, return receipt requested, on the third business day after mailing:

If to IDB:

Memphis and Shelby County
Industrial Development Board
125 N. Main Street, Room 468
Memphis, Tennessee 38103
(901) 576-7107

with a copy to:

Farris Bobango Branan PLC
Attn: Mark E. Beutelschies, Esq.
999 S. Shady Grove Road, Suite 500
Memphis, TN 38120-4128
(901) 259-7100

If to Port:

Memphis and Shelby County Port Commission
Attention: Chairman
1115 Riverside Boulevard
Memphis, Tennessee 38106-2504
(901) 948-4422

with a copy to:

Farris Bobango Branan PLC
Attn: Fred M. Acuff
999 S. Shady Grove Road, Suite 500
Memphis, TN 38120-4128
(901) 259-7100

If to Electrolux:

Electrolux Home Products, Inc.
Attn: Jacob Burroughs/Tom Vining
10200 David Taylor Drive
Charlotte, North Carolina 28262
(980) 236-2264

with a copy to:

Electrolux Home Products, Inc.
Attn: General Counsel
10200 David Taylor Drive
Charlotte, North Carolina 28262
(980) 236-2000

Any party may change the address to which notices may be sent by notice to the other party or parties as provided herein.

SECTION 10.10. Severability. Invalidation of any one or more clauses in any provision, or any entire provision, of this Agreement by judgment, order or decree of State or federal court shall in no way affect any other clause or provision in this Agreement, all of which shall remain in full force and effect.

SECTION 10.11. Time of the Essence. Time is of the essence for the performance of each provision of this Agreement.

SECTION 10.12. Conflicts. As between the parties to this Agreement, in the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of the Site Agreement, the provisions of this Agreement shall govern and control, provided however, that nothing herein shall be construed to amend, cancel, terminate or otherwise modify the terms, conditions and/or the parties' obligations set forth in Article X and Sections 3.2, 4.1, 5.3, 11.2, 12.5, and 12.6 of the Site Agreement.

SECTION 10.13. Counterparts. This Agreement may be executed by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original. All counterparts taken together shall constitute a complete agreement.

SECTION 10.14. Governing Law; Jurisdiction; Venue; and Service of Process.

(a) CHOICE OF LAW. THE LAW OF THE STATE OF TENNESSEE SHALL APPLY TO ANY DISPUTE BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PREMISES OR THE PROJECT.

(b) CONSENT TO JURISDICTION. WITH RESPECT TO ANY LEGAL OR EQUITABLE SUIT, ACTION, CLAIM OR PROCEEDING ARISING HEREUNDER, ELECTROLUX (I) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TENNESSEE AND THE UNITED STATES DISTRICT COURT LOCATED IN MEMPHIS, TENNESSEE, (II) AGREES THAT ALL SUCH SUITS, ACTIONS, CLAIMS OR PROCEEDINGS SHALL BE HEARD AND DETERMINED IN SUCH COURTS OF THE STATE OF TENNESSEE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT AND (III) IRREVOCABLY WAIVES ANY (A) OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY SUIT, ACTION, CLAIM OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT BROUGHT IN ANY SUCH COURT AND (B) ANY CLAIM THAT ANY SUCH SUIT, ACTION, CLAIM OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) LIMITATION ON JURISDICTION IN WHICH ELECTROLUX MAY BRING A SUIT, ACTION, CLAIM OR PROCEEDING. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.14(b), ELECTROLUX HEREBY (I) AGREES THAT ANY LEGAL OR EQUITABLE SUIT, ACTION, CLAIM OR PROCEEDING BROUGHT BY ELECTROLUX AND/OR ANY AFFILIATE THEREOF AGAINST IDB, PORT OR OTHER PUBLIC ENTITY ASSOCIATED WITH THE PROJECT ARISING OUT OF OR RELATING TO THIS AGREEMENT OR RELATING TO THE PREMISES OR PROJECT SHALL ONLY BE INSTITUTED BY ELECTROLUX OR SUCH AFFILIATE IN COURTS OF THE STATE OF TENNESSEE LOCATED IN MEMPHIS OR THE UNITED STATES DISTRICT COURT LOCATED IN MEMPHIS, TENNESSEE AND (II) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO BRING ANY SUCH SUIT, ACTION, CLAIM OR PROCEEDING AGAINST IDB, PORT OR OTHER PUBLIC ENTITY ASSOCIATED WITH THE PROJECT IN ANY OTHER COURT OR JURISDICTION.

(d) WAIVER OF JURY TRIAL. IDB, PORT AND ELECTROLUX HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT.

SECTION 10.15. Consequential, Punitive or Delay Damages. Except for claims based on the willful misconduct of the IDB, Port, City or County, Electrolux hereby waives any right to recover consequential or punitive damages (which shall include damages for delay or disruption in the Project) from any and all claims or actions brought by Electrolux against IDB, Port, City or County arising out of any default or breach by any of them of their respective obligations under this Agreement or arising out of or related to the Premises or the Project.

SECTION 10.16. No Modification of Lease. The PILOT Lease in the form attached hereto as Exhibit B may neither be materially changed or modified without first obtaining the written opinion of IDB Bond Counsel that such change or modification does not and shall not adversely affect the exclusion of interest on the Port Commission Revenue Bonds, Series 2011 from gross income of the holders thereof for federal income tax purposes.

SECTION 10.17. Damages Associated with Mississippi River. Electrolux hereby acknowledges that it assumes the risks associated with the location of the Premises relative to the Mississippi River and waives any and all claims for damages of any kind associated with the river and/or the level or flooding thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date first above written, pursuant to proper authority duly granted.

ELECTROLUX HOME PRODUCTS, INC.

By: _____

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF MEMPHIS AND SHELBY
COUNTY, TENNESSEE

By: _____

THE MEMPHIS AND SHELBY COUNTY PORT
COMMISSION, an organization created by
Chapters 500 and 529 of the Private Acts of
Tennessee of 1947, as amended

By: _____

APPENDIX 1

DEFINITIONS AND INTERPRETATION

INTERPRETATION

In the Agreement, unless a clear contrary intention appears, the following rules of interpretation shall apply:

A. Amendments Included. Definitions contained in the Agreement which identify documents, including the Agreement, shall be deemed to include all amendments, modifications, supplements, restatements, renewals, and replacements to such documents which may be entered into from time to time in compliance with the requirements of the Agreement or otherwise with the consent of IDB.

B. Use of "Including". When the term "include" or "including" is used in the Agreement, it shall be construed to mean "include or including but not limited to" the things specifically mentioned.

C. Captions. Captions and headings used in the Agreement are for convenience of reference only, and shall not affect the construction or interpretation of the Agreement.

D. Gender, Number, Etc. Any word in the Agreement which is expressed in the masculine or neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural number shall be deemed, whenever appropriate in the context, to include the singular and the plural. Any Exhibit, Schedule or other item referred to herein as being "attached" to the Agreement shall be construed to mean "attached to and made a part of the Agreement".

E. Laws. Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

APPENDIX 2

ADDITIONAL DEFINITIONS

ADA. The Americans with Disabilities Act of 1990, 42 U.S.C. 12101, as from time to time amended, together with any and all comparable Laws of any Governmental Entity.

Affiliate of any Person means any other Person which, directly or indirectly, controls or is controlled by or under common control with such Person. A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power:

- A. to vote 25% or more of the ownership interests having ordinary voting power for the making of major business decisions for such Person, and
- B. to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

Agreement. This Construction Reimbursement, Contribution and Audit Agreement, as amended, restated, modified or supplemented from time to time.

Anti-Terrorism Law. Shall mean the USA Patriot Act or any other law pertaining to the prevention of future acts of terrorism, in each case as such law may be amended from time to time.

Business Day. Any day (other than a Saturday or Sunday) on which Bank of America, N.A. is open to transact business.

City. Means the City of Memphis, Tennessee.

Completion. Means substantial completion of the Project such that it can be used for its intended purpose.

County. Means Shelby County, Tennessee.

Covenants, Conditions and Restrictions. All covenants, restrictions, conditions, easements, reservations and other matters affecting title to the Premises.

Default. Any occurrence which, with notice or the passage of time or both, would constitute an Event of Default under this Agreement.

Disbursement. Any disbursement or payment made by IDB to repay Electrolux for Approved Infrastructure Costs.

Distribution Site. The parcel of real property consisting of approximately 582.359-acres as more specifically identified in Exhibit A attached hereto.

ERISA. The Employee Retirement Income Security Act of 1974, as amended from time to time.

Equipment. Equipment to be used in connection with the construction, development or production operation of the Project.

Governmental Entity. The United States of America, any state including the State and the state of Electrolux's organization, any political subdivision of the United States of America or any state, including any city or county in such states, and any department, commission, board, bureau, court or administrative, regulatory, adjudicatory, or arbitrational body or other instrumentality or agency of any kind or any of them having jurisdiction in any way over the Premises, Electrolux, or any of the other parties or documents referred to in this Agreement.

Governmental Approval. Any Law of any Governmental Entity, including, without limitation, any zoning, subdivision or building ordinance or environmental protection law or regulation or any requirement of any kind which must be complied with for the issuance or continuing effectiveness of any Permit of any kind required by any Governmental Entity in connection with the transactions contemplated by this Agreement.

Improvements. Any and all fixtures, machinery, furnishings, equipment, supplies and all other property of any kind that constitutes part of the Project, whether or not an Approved Infrastructure Cost.

IRC. Internal Revenue Code of 1986, as amended from time to time.

Laws. Collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations which have been duly authorized and are currently in effect and/or hereinafter enacted, including judicial opinions or precedential authority in the applicable jurisdiction, and including, without limitation, all environmental laws, all rules and regulations relating to life safety and the ADA.

Lien. Any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or other security interest, security agreement or preferential arrangement of any kind (including any conditional sale or other title retention agreement, any financing lease involving substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

Material Adverse Effect. (a) Any effect in the business, assets, operations, results of operations or financial or other condition of the Premises or of Electrolux which materially and adversely affects the ability of Electrolux to pay or perform its respective obligations hereunder in accordance with the terms hereof, or (b) any other effect which materially and adversely affects the rights and remedies of IDB hereunder.

Obligations. All of the obligations of Electrolux under or in connection with this Agreement, the Site Agreement or any related instrument or document, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due.

Permits. All building permits, certificates of occupancy and other governmental or quasi-governmental permits, licenses and authorizations, including, without limitation, all state, county

and local occupancy certificates, and other licenses, in any way applicable to the Premises or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, and leasing of the Premises.

Permitted Encumbrances. Those encumbrances listed in Exhibit G attached hereto.

Person. Any natural person, partnership, limited liability company, corporation, firm, association, trust, Government Authority, or any other entity, whether acting in an individual, fiduciary or other capacity.

PILOT Lease. Shall mean the PILOT Lease in the form attached hereto as Exhibit B.

Plans. The final plans and specifications for the construction of the Project, approved by IDB and all Governmental Entities possessing jurisdiction, and upon which all building permits were or will be issued for construction of the Project.

Project Budget. The Project Budget as approved from time to time by IDB pursuant to Section 6.1 of this Agreement, the initial form of which is attached hereto as Exhibit C to this Agreement.

Project Costs. All costs and expenses of any kind which have been or will be incurred in connection with the Project, including the construction, equipping, operation and maintenance of the Premises through the Start of Production, including Electrolux Funded Improvements.

Public Funding Cap. The total amount of potential public funding in connection with the Project as identified in the Site Agreement and in Recital IV hereof. The Public Funding Cap shall be limited individually to the contribution amounts allocated to each Governmental Entity and Cumulatively to the sum of such amounts.

Site Agreement. Shall mean the Site Location and Development Agreement entered into by and between Electrolux, State, City, and IDB on or about December 15, 2010.

State. The State of Tennessee.

State Grant Agreement. A final, binding written agreement between State and IDB under which State agrees to provide \$97,000,000.00 for the purposes of funding Project related reimbursements as set forth in this Agreement.

Uniform Commercial Code and UCC. The Uniform Commercial Code as in effect in any applicable jurisdiction.

USA Patriot Act. Shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001.

EXHIBIT "B" TO FORM PILOT LEASE

Permitted Encumbrances

FACILITY SITE:

1. Any taxes for past, present, or future tax years which may become due but which are not presently due and payable because of the existing tax classification of the land as exempt.
2. Easements of record in Book 1345, Page 373; Book 1365, Page 16; Book 2553, Page 453; and Instrument Nos. G5 2092, 03180948 and 03180949, all in the Register's Office of Shelby County, Tennessee.
3. Resolution and Agreement Establishing Conservation Covenants and Restrictions of record at Instrument No. JU 0876 in such Register's Office; provided, however, the title policy to be provided to Electrolux shall insure against loss or damage which the Insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and, because of the failure to comply with the terms of that Resolution and Agreement referred to above, (a) denies the Insured the right to construct and maintain any improvements on the Land and/or (b) forces the Insured to demolish or remove any improvements on the Land.
4. Rights of others to access and traverse the Land for the sole purpose of using and maintaining levees and canals leading to the Mississippi River, which levees and canals are not located on the Land.
5. Terms, conditions, and provisions of that certain unrecorded Agricultural Lease Agreement dated January 1, 2010 between the Memphis and Shelby County Port Commission, the City of Memphis, and the County of Shelby, as lessor, and Dewayne Hendrix d/b/a Two Way Gin Company, Inc. and UCC-1 financing statement of record at Instrument No. 10022073 in such Register's Office.

DISTRIBUTION SITE:

1. Any taxes for past, present, or future tax years which may become due but which are not presently due and payable because of the existing tax classification of the land as exempt.
2. Easements of record in Book 3182, Page 269, Book 3186, Page 102, Book 3186, Page 105, Book 4662, Page 352, and EZ 0835; Book 3242, Page 370; Instrument No. F1 2670; Instrument No. K3 4536; Instrument No. 03180949; and Instrument No. 05105782, all in the Register's Office of Shelby County, Tennessee.
3. Resolution and Agreement Establishing Conservation Covenants and Restrictions of record at Instrument No. JU 0876 in such Register's Office; provided, however, the title policy to be provided to Electrolux shall insure against loss or damage which the Insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and, because of the failure to comply with the terms of that Resolution and Agreement referred to above, (a) denies the Insured the right to construct and maintain any improvements on the Land and/or (b) forces the Insured to demolish or remove any improvements on the Land.

4. Rights of others to access and traverse the Land for the sole purpose of using and maintaining levees and canals leading to the Mississippi River, which levees and canals are not located on the Land.
5. Terms, conditions, and provisions of that certain unrecorded Agricultural Lease Agreement dated January 1, 2010 between the Memphis and Shelby County Port Commission, the City of Memphis, and the County of Shelby, as lessor, and Dewayne Hendrix d/b/a Two Way Gin Company, Inc. and UCC-1 financing statement of record at Instrument No. 10022073 in such Register's Office.

EXHIBIT "C" TO FORM PILOT LEASE

Mayor's Letter



A C WHARTON, JR.
City of Memphis Mayor

CITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE



MARK H. LUTTRELL, JR.
Shelby County Mayor

March 14, 2011

Mr. Jacob Burroughs
Electrolux Home Products, Inc.
10200 David Taylor Drive
Charlotte, North Carolina 29262

Dear Mr. Burroughs,

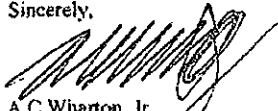
We are very pleased that Electrolux Home Products, Inc. has decided to develop a new facility here in the Memphis and Shelby County area. The project was reviewed under the payment-in-lieu-tax (PILOT) guidelines of the Memphis and Shelby County Industrial Development Board (IDB) using the following project assumptions:

Job Creation:	1,240 net new jobs
Average Wage:	\$30,472 without benefits
Public and Private Investment Personal Property:	\$126,000,000
Public and Private Investment Real Property:	\$ 69,000,000
Total Public and Private Capital Investment:	\$195,000,000
Location:	Pidgeon Industrial Park, City of Memphis

Based on the information submitted and shown above, we recommend a fifteen year tax freeze on real and tangible personal property involved in the project. We are excited about the decision by Electrolux Home Products, Inc. to locate your operations in Memphis and Shelby County, and we would like you to know that we support its continued prosperity.

If you have any questions regarding this PILOT recommendation, please contact either of us or Charles Gulotta, Executive Director of the Memphis and Shelby County Office of Economic Development at (901) 576-7107.

Sincerely,


A C Wharton, Jr.
Mayor-City of Memphis

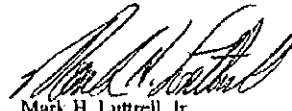

Mark H. Luttrell, Jr.
Mayor-Shelby County

EXHIBIT "D" TO FORM PILOT LEASE

Policies and Procedures

CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE INDUSTRIAL DEVELOPMENT BOARD PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM OVERVIEW

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**CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
INDUSTRIAL DEVELOPMENT BOARD
PAYMENT-IN-LIEU-OF-TAX (PILOT)
PROGRAM OVERVIEW**

Section I. General Purpose and Objectives

The City of Memphis and County of Shelby, Tennessee, are committed to the promotion of high quality development in all parts of the City and County and to ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of Memphis and County of Shelby will, on a case-by-case basis, give consideration to providing Payment-in-Lieu-of-Tax (PILOT) incentives to stimulate economic development.

The Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (IDB) was established by City and County governments to assist in the financing of new business and industry and to promote local industrial expansion. The corporation was organized in accordance with the State of Tennessee Industrial Development Corporation Act, codified at Tennessee Code Annotated §§ 7-53-101 et seq. It is the intention of this Board to conduct its activities consistent with the provisions of the Act and the intent of the local legislative bodies in establishing the Corporation.

To this end, the IDB will conduct its business within the following guidelines in the consideration of applications for PILOT incentives. **Nothing herein shall imply or suggest that the City of Memphis and County of Shelby is under any obligation to provide a PILOT to any applicant.** All applicants shall be considered on a case-by-case basis, and the decision to approve or deny a PILOT shall be at the discretion of the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (IDB).

The IDB is supported by the Office of Economic Development which is a department of the Memphis and Shelby County Division of Planning and Development.

General PILOT Program Requirements:

1. In accordance with the requirements of State law, the IDB must find each project that is presented for approval to be in the public interest and one which will increase employment within the State of Tennessee. The IDB will evaluate projects for PILOT eligibility based primarily on the following performance standards:

- A. Number of jobs created
- B. Wages paid, medical benefits provided
- C. Capital Investment
- D. Diversity Plan
- E. Benefit/Cost Ratio where public revenue to the city and county exceeds public costs for the PILOT incentive

A. Industrial Projects constructed to manufacture, assemble, process, fabricate and distribute agricultural, mining, biomedical, electronics, food, chemical, alternative fuels, automobile or other manufactured products.

B. Pollution Control projects, approved by the City of Memphis or Shelby County, promoting the health, welfare and safety of the citizens of Memphis and Shelby County have been found by the legislature to be in the public interest without regard to employment factors.

C. Distribution Facilities constructed to receive and forward final goods to various locations.

D. Office Buildings and Service Facilities which the project will occupy for at least the term of the PILOT.

E. Major Tourism Projects that meet the threshold set for participating projects under the Convention Center and Tourism Development Financing Act of 1998 (Title 7, Chapter 88, Tennessee Code Annotated)

F. Other Non-Retail Projects not defined above may be considered for PILOT on a case-by-case basis.

The following types of Projects shall not be considered by the Board:

A. Projects that are already underway or have begun construction. A project must meet the "but for" test, which affirms that but for a PILOT incentive the project is not viable.

B. General Commercial Projects, Housing Projects, Retail Centers, and Entertainment and Recreation Facilities with the exception of a Qualified Tourism Project.

C. Speculative development: This Policy shall not be construed to prevent Projects for single users, even though actual ownership of such Projects may reside in an entity or entities other than the user. Such cases shall be considered upon their individual merits, but in no event shall a Project owned by a party other than the primary user of the facility be considered unless: All of the Facility or a predefined percentage of the Facility will be used for the Project which is the subject to the PILOT. No PILOT Application shall be approved if it would constitute an artifice or device to circumvent the Board's requirement that "speculative" rental projects not be approved.

3. The Board shall take title to the real and/or personal property associated with the Project as approved by the Board, and shall lease the property to the Applicant for the PILOT Term, with PILOT payments as set forth in the Lease Agreement.

4. Under a Payment-in-Lieu-of-Taxes (PILOT) agreement, payments are made to the IDB in lieu of ad valorem taxes on the property involved in the Project. Generally, for real property, such amounts are to be based on the taxes being generated at the time the Board takes title to the property typically considering only the value of the unimproved property. Generally, for tangible personal property, such amounts are to be based on the taxes being generated on the current assessed value of the property at the time the Board takes title to the property. The PILOT payment will include at minimum 25% of Shelby County taxes that would otherwise be due on the property, and 10% of City of Memphis taxes otherwise due if the property is located in the City of Memphis.
5. Each Applicant in its development, ownership and operations will be required to comply with all laws, ordinances, orders, rules, regulations, and requirements of duly constituted public authorities, which are or shall become applicable to the Project, the repair and alteration thereof, and the use or manner of use of the Project.
6. In order to support the community's economic development goals which include enhancing locally owned, small and minority business development, project companies receiving a PILOT incentive must participate in the IDB Diversity Program. The guidelines for the Diversity Program are located in Part 3 of this program overview.
7. No project shall receive a PILOT incentive lease term beyond a total of 15 years per the Memphis City Council's Resolution dated February 20, 1996, and the resolution by the Board of Commissioners of Shelby County, Tennessee, dated February 27, 1996. A new, totally separate project may locate on property previously under a PILOT lease agreement, and if eligible for a PILOT, could result in the property being in the PILOT program for more than 15 years.
8. The length of the PILOT term is based upon an evaluation of the project's merits. Each project coming before the IDB will be scored based on the PILOT Evaluation Matrix included in Section XIII of this Program Overview.

Section II. Conflict of Interest

Each IDB member shall be responsible for disclosing any material interest which he or she may have in or with an Applicant, Sponsor or financing source. Any Board member having any material interest in a Project or a financial or family relationship with an Applicant or Sponsor or financing source shall submit to the IDB Counsel a representation of that interest, and IDB Counsel shall advise both the IDB and IDB member whether the member needs to recuse himself or herself from consideration of the Application. Such recommendation of Board Counsel shall be conclusive. If recusal is recommended, the IDB will then consider the Application without participation from the member or members who recuse themselves.

IDB Counsel shall not have a professional legal relationship with the Applicant or any Sponsor's source of financing other than incidental representations in connection with proposed financing or similar financing. In the event of a conflict involving IDB Counsel, special counsel shall be retained by the IDB to represent it in connection with the particular project being considered.

Section III. Definitions

“Annual Average Wage” for Shelby County is the annual average wage for all businesses and industries operating in Shelby County as calculated and reported by the Tennessee Department of Labor and Workforce Development in the Quarterly Census of Employment and Wages – Annual Average. The annual average wage as reported by the Department includes regular wages, overtime, paid holidays, and paid vacation.

The PILOT evaluation will compare the project annual average wage to the Shelby County annual average wage, so the project annual average wage is likewise to include regular wages, overtime, paid vacation, and paid holidays.

“Brownfield” means properties that have been vacant or abandoned for at least five (5) years, have a prior history of industrial use and have potential environmental contamination as indicated by a Phase I Environmental Assessment. Additionally, only those properties in excess of five acres or structures with more than 20,000 square feet of gross floor area will be considered an eligible as an eligible brownfield.

“Contract Employee” means a person employed by a party other than the primary user of a facility who will directly benefit from the PILOT incentive, but who is assigned to work for the primary user of the facility as a full-time equivalent and is considered a necessary member of the workforce responsible for duties and assignments required to meet production levels of the primary user. All contract employees are subject to the PILOT criteria for determining net new jobs, including but not limited to wages and benefits.

“Expansion” means the addition of buildings, structures, machinery, or equipment for the purpose of expanding a Project. The Expansion will be evaluated independently from the original Project, and shall require a new application. Expansion projects will be considered only if they create net new jobs.

“Identified Labor Source” means Workforce Investment Act customers who are unemployed, underemployed and/or employed and certified by the Memphis Career Center.

“Full-Time Equivalent Jobs” means full time jobs which provide full time employment of 1,600 hours per year, and permanent part time jobs, which when combined, total 1,600 hours of employment. For example if an employer had one employee working 1,600 hours per year and two employees working 800 hours per year each, that employer would be providing employment of two full-time equivalent jobs.

“Lease Agreement” means the formal contract between the lessee and the Industrial Development Board containing all the conditions with which all parties of said contract must be in compliance.

“Minority/Small Business” firms are defined for the IDB PILOT and Diversity Programs as those businesses certified as minority and/or small businesses by the City of Memphis or Shelby County.

"Net New Jobs" means the number of new full time equivalent jobs in Shelby County, Tennessee created by the project, and located at the site that is the subject of the PILOT Lease Agreement. Net New Jobs in Shelby County, Tennessee shall not include any jobs moved or replaced from any other site(s) in Shelby County, Tennessee. Net new jobs shall include contract jobs as defined in this document.

"PILOT Evaluation Matrix" summarizes the methodology for determining the number of years recommended for a PILOT lease term agreement. The matrix outlines the points that are awarded for various aspects of a project that meet the defined purpose of the PILOT Program. The PILOT evaluation matrix is included in Section XII of this Program Overview.

"Primary User" means corporation or other business entity, or a group of individual entities that jointly operate a project, and who in total contribute to the total number of jobs and the capital investment of project.

"Project" means buildings, structures, machinery, equipment, land, new employees and applicable wages defined in the Application. This may include the addition of buildings, structures, machinery, as well as equipment approved to be added by the IDB within two years of the PILOT lease date.

"Qualified Tourism Project" means any project that (a) qualifies as a "Qualified public use facility" as defined in the Convention Center and Tourism Development Financing Act of 1998, T.C.A. 7-88-103 or (b) any other tourism project approved by a majority of the Board.

"Ramp-Up Period" means the initial time period in which the company is provided in order to meet its job, wage, capital investment and diversity plan commitments, and comply with special circumstance commitments in applicable cases. The ramp-up period shall be two years unless a waiver is granted by the IDB.

"Relocation" means the movement of an Applicant's operation within Shelby County, Tennessee resulting from an expansion. Such movement results in the cessation of operations at the applicant's existing facility and the establishment of operations at another site in Shelby County, Tennessee. In such case, the benefits of the PILOT incentive shall apply only to the incremental investment or property (based on square footage of new facility and the square footage of the existing facility) associated with the relocated project. The PILOT payments shall be calculated to reflect, at the minimum, the taxes paid on the applicant's facility prior to the move.

"Sponsor" Any entity with legal or economic responsibility for any project proposed to be financed by the IDB or any entity with legal or economic responsibility for any project proposed to be conveyed to the IDB in a PILOT lease agreement. A Sponsor may be the applicant or the proposed project lessee.

In a three-party PILOT transaction, the sponsor is the fee owner of the real property upon which the Project will be located. The sponsor will convey the real property to the Board, the Board will lease the real property to the sponsor and the Sponsor will sublease the real property to the Applicant. The Applicant will also be a party to the lease with the IDB. The basic operating lease term between the lessee (sponsor) and the sub-lessee (applicant) for the real property must be equal to (or with option to renew or extend sub-lease) or greater than the approved PILOT lease term to ensure continuous applicant accountability during the approved PILOT term.

Section IV. PILOT Incentive Criteria

The IDB has established the criteria listed below for the review of PILOT applications. These criteria are based upon the economic and physical development policies of the City of Memphis and Shelby County, Tennessee, and may be changed by the IDB without notice. These criteria will be considered, in accordance with state law, and applied on a case-by-case basis in evaluating projects for PILOT incentives. Nothing herein, however, shall obligate the Board or Memphis or Shelby County to approve a PILOT incentive.

These criteria address the basic responsibility of the Board to demonstrate that an incentive for a project is in the public interest and creates jobs. If a project meets the basic criteria to be considered for a PILOT incentive, the length of any PILOT Lease term that may be awarded will be determined based upon the PILOT Evaluation Matrix.

- A. **Jobs** A project must create net new jobs to be considered for a PILOT incentive. Points will be awarded according to the PILOT evaluation matrix based upon the number of net new full-time-equivalent jobs employed directly by the project operations including contract employees.

Project employees must be paid at least \$10 per hour (actual wage per employee, not average wage) to be considered in the determination of net new jobs for a PILOT incentive. This criterion may be waived for a qualified tourism project.

- B. **Wages** Projects that pay annual average wages (including paid vacation and holidays) that equal or exceed 75% of the current Shelby County annual average wage will be awarded points according to the evaluation matrix.
- C. **Benefits** Project employers must provide medical benefits and pay at least 50% of the cost of those benefits to be eligible for a PILOT incentive. This criterion may be waived for a qualified tourism project.
- D. **Capital Investment** The project investment in land, building, site preparation, equipment and any other tax producing improvements will be awarded points according to the evaluation matrix.

Additional capital investment in an amount not to exceed **10%** of the value initially approved by the IDB may be added to the PILOT lease for the term of the incentive.

Investment capital cannot be transferred between real and personal property categories once the IDB has approved the Applicant's application. Subsequent investment capital reassignment by the Applicant will require re-submittal of another application for IDB approval.

Monthly or annual rental payments during the PILOT Lease term will not be construed as part of the leasehold property improvement or as increasing the value of the Applicant's capital investment.

- E. Location Projects locating within the City of Memphis and/or Target Areas will be awarded points according to the evaluation matrix.

Target Areas currently include:

- Renewal Community as defined by HUD
- Renewal Market Tax Credit Area as defined by the U. S. Department of the Treasury
- Other City Target Areas
 - Frank Pidgeon Industrial Area
 - State and Federal designated brownfields
 - Urban Economic Revitalization Areas

- F. Diversity Plan All Applicants must submit a Diversity Plan developed in conjunction with the IDB's consultant to be eligible for a PILOT incentive. See the IDB Diversity Program in Section for complete information regarding Diversity Plan requirements.

If an Applicant submits a Diversity Plan that significantly exceeds basic diversity plan goals, and the project achieves the plan's goals, the IDB may authorize a one or two year extension of the PILOT incentive lease term. Also listed under Special Incentives, Section VII.

- G. Benefit to Cost Ratio The public benefit, as measured by new local tax revenues generated for the city and county by the project, must exceed the public cost as measured by the city and county property tax revenues forgone as the PILOT incentive. The ratio of benefits to costs must exceed one to one unless a two-thirds majority of the board votes to waive this requirement for a project.

- H. Special Consideration Points The IDB shall have at its discretion to consider pertinent information that demonstrates a significant beneficial impact upon the economic and physical plans of Memphis and Shelby County.

Accordingly, the IDB may, but is not required to, grant additional points to projects that meet any of the following criteria listed below.

The maximum points awarded for meeting these criteria are noted in the evaluation matrix. In no event shall special consideration exceed 25% of the matrix score calculated prior to the addition of special consideration points.

If any special consideration points are awarded, the project must still meet the criteria of a benefit to cost ratio that exceeds one to one as noted in criterion G above.

1. Targeted Industries

- a. Biomedical (research and manufacturing)
- b. Electronics (assembly, repair and manufacturing)
- c. Manufacturing (food processing, chemical, alternative fuels, automobile and other manufacturing)
- d. Information Technology
- e. Logistics Music and Film Tourism (Key Targets from *Memphis, ED Plan*)

2. Regional, District, National, or International Corporate Headquarters

3. U. S. Fortune 500/Global 1,000 companies, or Nationally Recognized Industry Leader
4. Major Employers (500 + jobs)
5. Minority/Women-owned Business
6. Benefit to Cost Ratio for the project exceeds 3 to 1.

Any PILOT lease term adjustment caused by Applicant's default regarding special consideration points will be limited to a two (2) year maximum adjustment.

PILOT Incentive Benefits and PILOT Payments

A PILOT incentive benefit is 75% of Shelby County property taxes, and if located in Memphis 90% of City of Memphis property taxes, for the number of years in the PILOT lease term as determined by scoring criteria listed above.

The PILOT payment is based on 25% of Shelby County taxes, plus 10% of City of Memphis taxes if the property is located in the City of Memphis. Additional fees apply as listed in Section IX of this Program Overview.

Section V. Community Reinvestment Credit PILOT Criteria

Community Reinvestment Credit (CRC) applies to:

- i) currently assessed real properties, or portions of currently assessed real property (except for unutilized leased or owned floor area) within the corporate limits of the City of Memphis **or**
- ii) centrally assessed property for companies set forth in T.C.A. 67-5-13 or as amended with property in the Corporate City Limits of the City of Memphis

CRC Criteria:

- A. Capital Investment (Minimum Net New Investment): The Community Reinvestment Credit will be applied based on the then current appraised value of the CRC related real estate. The points earned for a CRC project capital investment cannot exceed 10 points.
- B. Jobs: A minimum requirement of 15 Net New Jobs or Net New Jobs equal to 25% of the current workforce, whichever is greater, (the 25% jobs requirement applies only in projects locating to properties that already have been occupied) is required for a CRC incentive. Jobs are scored the same as for a basic PILOT in accordance to the evaluation matrix.
- C. Wages and Benefits: The wage and benefit requirements and scoring are the same as the basic IDB wage criteria.
- D. Location: Is evaluated for points in the same manner as a basic PILOT in accordance with the PILOT evaluation matrix.

- E. Diversity Plan: Must meet the same requirements as a basic PILOT and in accordance with the Shelby County IDB Diversity Program.
- F. Benefit to Cost Ratio: The same requirement of a ratio that exceeds one to one applies as in a basic PILOT
- G. Discretionary Points: CRC projects are eligible for the same special consideration points as a basic PILOT and are awarded at the discretion of the IDB.

CRC PILOT Incentive Benefits and Payments

The CRC PILOT incentive benefit and payments are the same as for a basic PILOT except:

A. Land: The Real Property Lease Agreement will reflect a PILOT assessment basis equal to at least 100% of the assessed value of the land on which the CRC property is located.

B. Net New Square Footage: Real Property Netting: If the primary user already owns or leases real property in Shelby County when the project application is filed, real property will be deducted on a square foot basis from the project real property for the determination of CRC benefits.

However, the IDB may not apply netting to a project if:

- The PILOT applicant company is a Greater Memphis Chamber of Commerce targeted industry, and
- The PILOT applicant company presents evidence that expansion at its current location is not practicable.

C. CRC Annual Real Property Cap: The CRC benefit is capped at \$2.1M per year in actual property tax payments otherwise due at current approved tax values and rates, and adjusted based upon reappraisals and tax increases, (City of Memphis \$.9M and Shelby County \$1.2M less the 25% PILOT payment) will be set and monitored through quarterly reporting by the Office of Economic Development.

The CRC annual cap calculation will not apply to projects which are located in:

- Renewal Community and the New Markets Tax Credit areas, and other economic development target areas declared by the City of Memphis and Shelby County.
- Properties containing space with improvements that have never been leased or occupied.

Section VI. National Corporate Headquarters PILOT Criteria:

Projects which are not eligible for CRC Credit because they are locating outside the corporate limits of the City of Memphis may seek a PILOT benefit on real property that is to be used as the Primary North American Corporate Headquarters for the primary user. The project company must satisfy the following criteria to be eligible to apply for a Corporate Headquarters PILOT benefit:

- A. The company must be a corporation of national significance;
- B. A significant percentage of the decision making officers or employees of the corporation must work and maintain their primary offices at the proposed national corporate headquarters in Shelby County;
- C. The proposed headquarters should be the office location of a majority of the management employees of the corporation;
- D. The corporation must make a significant financial commitment to the property, which is the headquarters location; and
- E. The corporation and project must meet the normal requirements for an approved PILOT.

Section VII. Special Incentives

Special PILOT incentives may be granted by the IDB in an effort to more aggressively pursue a more sustainable community, to encourage sustainable, "green" buildings, as well as to reduce recidivism rates for released prisoners.

No property, or portions of property under the PILOT program, shall receive PILOT benefits beyond the 15-year maximum term as a result of these special incentives.

1. Special Incentive: Green Initiative

This incentive awards additional time to the term of approved PILOTs for carrying out environmentally friendly practices through two possible components:

- i.) Leadership in Energy and Environmental Design (LEED) Green Building Rating System Certification; **or**
- ii.) an Environmental
Commitment Plan. A. LEED
Certification:

LEED is a third party certification program and nationally accepted benchmark for the design, construction and operation of high performance green buildings. Projects that are awarded these LEED designations will be eligible for the following additional years of real and personal property PILOT incentives:

Certified	Add one year
Silver	Add one year
Gold	Add two years
Platinum	Add two years

This designation must be awarded during the ramp-up period for approved PILOT incentives.

B. Environmental Commitment Plan:

As an *alternative* to having a building designated as a LEED property, an Environmental Commitment Plan can be presented for approval and implementation. Approval of and compliance with an Environmental Commitment Plan would add one (1) additional year to the PILOT term on real and personal property for companies clearly showing performance in two (2) or more of the key areas of human and environmental sustainability during the term of the PILOT: sustainable site development, water savings, energy efficiency, materials selection and indoor environmental quality.

Specific performance measures for this component of the Green Initiatives Special PILOT incentives include:

- Company Fleets: Utilization of alternative energy or environmentally friendly "street designated" company fleets (autos, delivery trucks, etc., but not including fork lifts). At least 25% environmentally friendly vehicles must be in this fleet. This fleet must include at least fifty environmental friendly vehicles. "Environmentally friendly" can include, but are not limited to vehicles which: are hybrid or battery powered; use alternative fuels such as bio-fuels; use fuel cells; or are clearly identifiable vehicles which in their use, lessen negative impacts on the environment.
- Renewable Energy: Use of onsite renewable energy such as solar, wind, micro-turbines, fuel cells, or other which represents at least 25% of a PILOT facility's annual energy use.
- Green Rooftops: Installation of Green Rooftops on PILOT facilities, which are designed to reduce energy costs, capture rainwater, and reduce storm water runoff. These rooftops must be more than incidental plantings or rooftop gardens, but designed to environmental standards which provide substantial reductions of adverse environmental factors. They can be designed as either extensive or intensive eco-roofs.
- Waste: Eighty-five percent or more of manufacturing or processing waste is to be used in recycling, composting, or reuse in other processes. The intent is to keep waste products out of landfills and to have them used constructively. Waste stream audits, reports from recycling facilities, and other forms of documentation shall be required.
- Ridesharing: Companies with 50 or more employees who can document that at least 25% of their employees use carpooling, company vans, or public transportation strategies to commute to work on a daily basis. The intent is to encourage PILOT companies to keep private vehicles off of public streets in their daily commute. Memphis and Shelby County Health Department manages the local rideshare program and can provide the needed resources and tracking for this component.

- Water Conservation: Installation of water conservation measures and mechanisms including, but not limited to low flow/waterless plumbing components, recycling, limited use or no use of lawn sprinkler systems, storm water site detention, and other strategies. Documentation must be provided that these measures reduce the use of water by a significant measure (at least 25%) as compared to buildings which do not utilize water conservation measures. Documentation can include but not be limited to gallons used per person, overall water usage percentage for comparable facilities, or related measures.
- Other factors not specifically mentioned here which lessen adverse environmental impacts, and reduce the use of non-renewable resources as approved by the Industrial Development Board.

Green Initiative Incentives Approval The IDB reserves the right to retain or secure outside expertise to review any or all of these situations to determine that the spirit and letter of the regulations is upheld.

2. Special Incentive: Prisoner Re-Entry

For companies who work with local and/or State programs in hiring formerly incarcerated individuals through a Prisoner Re-Entry Plan approved by the City, County and/or State, the following incentives may be awarded:

- Companies that hire 5-15 re-entry employees may be eligible for a one (1) year PILOT lease term extension;
- Companies that hire 16-29 re-entry employees may be eligible for a two (2) year PILOT lease term extension;
- Companies that hire 30 or more re-entry employees may be eligible for a three (3) year PILOT lease term extension.

All companies receiving benefits under this program must retain the specific number of re-entry employees committed to, for the full term of the PILOT.

Memphis, Shelby County and the State of Tennessee are fully invested in providing effective prisoner re-entry programs to reduce recidivism rates among released prisoners. They are:

City of Memphis Second Chance: Participants include ex-offenders with one felony conviction who reside within Memphis and Shelby County; and businesses interested in hiring ex-felons. Partners include the City of Memphis, U.S. Department of Labor, public/private ventures and local businesses.

Shelby County Prisoner Re-Entry Program/3 R Project: Expanding on the original Shelby County "Building for the Future" construction trades inmate training program started in 1990 and now collaborating with the Operation Safe Community initiative to make Memphis one of the safest communities of its size by 2011, the Shelby County Re-Entry Program has expanded to "The 3 R Project: Rehabilitate, Renew, Reconnect". The 3 R Project is an intensive voluntary program that supports prisoners through housing, mental and physical health services, family unification, life skills and employment. The program allows inmates with six months to one year remaining on their sentence to apply for the program and work for local companies.

State of Tennessee Reentry Collaborative: Successful transition of offenders from State prison to community through a collaborative effort of State agencies, community resources and the offender is available through the Tennessee Reentry Collaborative (TREC). Participating agencies include a wide range of disciplines: the Tennessee Department of Correction, Mental Health and Developmental Disabilities, Veterans Affairs and Labor and Workforce Development and others. The mission of TREC is "The Tennessee Reentry Collaborative (TREC) will provide a continuum of services for all offenders reentering society that seeks to: restore victims, communities and offenders and helps offenders to be successful in order to reduce recidivism and promote public safety".

Prisoner Re-Entry Incentive Approval: The IDB reserves the right to retain or secure outside expertise to review any or all of these situations to determine that the spirit and letter of the regulations is upheld.

3. Special Incentive: Diversity (See Diversity Program in Section XIV

If an Applicant submits a Diversity Plan that significantly exceeds basic IDB Diversity Plan goals, and the project achieves the plan's goals, the IDB may authorize a one or two year extension of the PILOT incentive lease term. The Diversity Plan must be performed successfully over the life of the initial PILOT lease term for the extension to receive final authorization.

Diversity Incentive Approval: Plan must be developed with the IDB's consultant. The consultant must recommend to the IDB that the plan exceeds the Diversity Program Requirements for the project to be considered by the IDB for a special incentive benefit.

Section VIII. Retention PILOT Criteria

Adopted by the IDB

11-18-09

To qualify for a payment-in-lieu-of-tax (PILOT) retention incentive from the Shelby County IDB:

- A. Company must have been operating and directly employing workers in Shelby County for 10 years prior to applying for this retention assistance
- B. Company must be financially sound
- C. Company history and performance regarding any past PILOT agreements will be reviewed by the IDB
- D. Company must be expanding its operations and upgrading its technology or processes to better position the company for longevity
- E. Company must demonstrate a long-term commitment to Shelby County by buying or building a facility to house its operations, expanding an existing facility, or by signing or extending a lease for at least as long as the term of the incentive
- F. Company must invest a minimum of \$10 million in real and/or personal property for this project in Shelby County

- G. Company must retain a minimum of 100 jobs in Shelby County with an annual average pay that equals or exceeds the Shelby County Average Annual Wage
- H. Financial benefit within Shelby County from the jobs retained must exceed the opportunity cost of the tax incentive by a ratio of at least 2 to 1 over the term of the incentive agreement, however:
 - 1. This ratio may be lowered (not below 1 to 1) when the Shelby County unemployment rate exceeds 8.5%, or raised if the unemployment rate is below 5%
 - 2. If the benefit to cost ratio significantly exceeds 3 to 1 the IDB may lower the minimum requirements for job retention and/or capital investment, so long as the resulting benefit to cost ratio exceeds 2 to 1
- I. Additional years may be added to the PILOT incentive term for achieving Green Initiatives and for exceeding Diversity Program requirements as outlined in Section VII of this Program Overview; these additional years may bring the benefit to cost ratio below minimum requirement of 2 to 1, however, the benefit to cost ratio must always exceed 1 to 1
- J. As with all PILOTS granted by the Shelby County IDB, the term of the retention PILOT agreement shall not exceed 15 years
- K. Company must comply with all Shelby County IDB application, fee, compliance, and Diversity Plan requirements in the Shelby County Payment in Lieu of Tax Program Guidelines
- L. Each Shelby County IDB Retention PILOT project will contain provisions designed to provide a benchmark for measuring the Company's compliance with the program. The benchmark may be based on the PILOT Evaluation Matrix or another appropriate set of standards for measuring capital investment and job retention, as approved by the IDB Board.
- M. Each Shelby County IDB Retention PILOT project will contain provisions designed to adjust benefits awarded under the program based on the evaluation of the Company's compliance with the approved PILOT project objectives and the program requirements.
- N. A relevant ramp-up period will be established for each retention project

Section IX. Application Process

Any person who wants to have a project considered the Memphis and Shelby County Industrial Development Board for a PILOT to encourage location, expansion and/or modernization of operations within the City of Memphis and/or the unincorporated areas of Shelby County shall be required to comply with the following application guidelines. Nothing within these guidelines shall imply or suggest that Memphis and Shelby County is under any obligation to provide a PILOT in any amount or value to any applicant.

The IDB meets to consider applications for PILOT incentives on the third Wednesday of each month, with the exception of December when it meets on the second Wednesday. The IDB considers applications at duly called meetings conducted in compliance with the Sunshine Laws of the State of Tennessee. Monthly meetings may be waived or held at a different location or date at the discretion of the IDB.

Pre-Application:

Potential Applicants or their representative(s) shall submit to the Industrial Development Board its estimates on the number of jobs, wages, capital investment, potential location, diversity plan, and any other informative company data.

The applicant must hold a pre-application conference with Staff prior to the submission of a formal application. It would be beneficial to the Staff and the applicant if the meeting were held prior to the submission of the preliminary information.

Reason for PILOT Application:

Applicants shall submit a statement outlining the reason why this project requires public investment to stimulate private investment and what competitive advantages exist in other markets under consideration. The PILOT program is not considered to be an entitlement program. Each application shall include a **written statement** from the Applicant demonstrating that the PILOT incentive is necessary to stimulate private investment and reflect the competitive advantage of other markets under consideration, when applicable.

Application:

An application for a PILOT incentive shall be made on the PILOT Application form (Section XV) or in conformance with said form. An application fee in accordance with Section IX below must accompany any application. The application fee is non-refundable. **An application shall be filed with the Industrial Development Board Staff no later than the close of business 14 calendar days prior to the IDB meeting.**

The Applicant shall provide an audited financial statement supporting the Applicant's net worth, unless the condition is waived by vote of at least five (5) IDB members (revised July 16, 2003).

Each application shall include a statement that the Applicant complies with Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d) and will provide certification of ongoing compliance in this regard with its annual report to the IDB.

Application Amendment:

The Applicant has twelve (12) months from the initial date of the Board's approval to amend its PILOT Application.

Period to Close Lease Agreement:

Applicants must close on their real property within a one year limitation and close on their tangible personal property within a two-year limitation. Otherwise, the Applicant would have to apply for an extension or submit a new application.

Section X. Fees

Application Fees:

The Application for a PILOT must be completed and submitted with an Application fee calculated as follows:

<u>Estimated Project Investment at the Time of Application</u>	<u>Application Fee</u>
\$ 0 - \$ 750,000	\$1,000
\$ 750,001 - \$1,000,000	\$1,500
\$1,000,001 - \$2,500,000	\$2,000
\$2,500,001 - \$5,000,000	\$3,000
\$5,000,001 - and greater	\$4,000

The application fee shall be credited against the closing fee.

Application Amendment Fee:

Amendment to an existing PILOT Application shall require a fee of \$1,000.

Closing Fees:

A closing fee computed as follows will be paid to the Board prior to or at the closing of the PILOT Lease: PILOT closing fees are based on the benefits that a company will receive (i.e., value of the tax savings over the applicable tax freeze term) rather than on the total project investment.

The PILOT Lease closing fee will be calculated at 5% of the tax savings with a minimum of \$1,500 not to exceed a maximum of \$300,000. The Company receiving the PILOT will also be responsible for paying any additional, unusual expenses (i.e., attorney fees caused by project compilation, copies, postage, long distance telephone calls, etc).

In the event that a property is annexed into the City of Memphis, an additional closing fee shall be assessed to the PILOT grantee based upon the estimated City of Memphis tax savings that would accrue to the PILOT grantee as a result of the annexation.

All Applicants are required to submit drafts of all closing documentation (including Deeds, Bills of Sale and Leases) to both the IDB Counsel and IDB Staff within 30 days of the Board's approval of the PILOT closing date. An additional copy of the documentation should be sent to the Board's staff. If Board Counsel has not received the required documentation within the 30 the Applicant will forfeit one-fourth (1/4) percentage per month of the PILOT Application fee for every month the documentation is late.

Personal Property Fees:

For all personal property that is subject to a PILOT agreement for projects located in the City of Memphis, the Applicant shall pay a fee in the amount of 5% of the taxes otherwise due, up to \$50,000, to the City and a fee in the amount of 5% of the taxes otherwise due, up to \$50,000, to the County. For projects located outside of the City of Memphis, the Applicant shall pay a fee in the amount of 5% of the taxes otherwise due, up to \$50,000, to the County. These fees are in

addition to the closing fees and will be invoiced as part of the closing process. The revenue from these fees will be used for inner city economic development purposes.

Penalties:

Upon termination of the Lease, the Board shall provide written notification to the Applicant advising of Applicant's duty, pursuant to the Lease, to submit to the IDB all required documentation and approvals to execute the quit claim deeds and bills of sale necessary to transfer ownership of all PILOT property to the Applicant. Applicant's failure to submit required documentation and approvals within ninety (90) days of the notification shall result in a penalty of \$2,000 per month, which shall accrue for each month in which Applicant fails to submit these documents after notification has been submitted by the Board.

Lease Amendments:

Amendments to existing leases shall require a fee of \$1,000.

Termination Fee

All applicants must pay a termination fee of \$1,000 at the time of closing any lease agreements.

Assignment of PILOT Benefits:

PILOT benefits are not assignable without the prior consent of the IDB. Parties seeking a transfer of an existing PILOT or determining whether a new PILOT should be sought shall confer with the staff of the IDB to determine the proper procedure in the specific transaction. The PILOT Evaluation Committee shall make a recommendation to the Board after conferring with the staff, concerning the proper procedure with regard to the specific transaction as to whether an assignment or a new application is recommended.

In the event an assignment is approved, the fees for such assignments will be as follows:

Transfer Fees shall be charged on the following basis and must accompany the Application for the assignment of PILOT benefits:

1% of the tax savings up to \$1,000,000 with a minimum fee of \$4,000.

1/2% of such savings over \$1,000,000 with a maximum fee of \$25,000.

The Applicant shall also be responsible for all attorney fees incurred by the Board in processing the application for transfer of PILOT benefits.

Purpose of Fees:

The above quoted fees are for reimbursement of the cost and expenses of the Board, and other economic development programs as approved by Memphis and Shelby County Administrations. The Applicant is responsible for payment of its counsel's fees and other expenses attendant to the application.

Section XI. PILOT Closing Requirements

- A. The IDB will be listed as an additional insured party on real property insurance contracts.
- B. Environmental Report Requirements:

The Applicant must submit an Environmental Report. The Environmental Report for developed property should be dated no more than three (3) months prior to the conveyance to the Board for improved real property and no more than six (6) months prior to the conveyance to the Board for undeveloped real property. All environmental reports must grant to the IDB the right to rely on such reports. The Environmental Report and Applicant's pre-acquisition review which must be certified to the Board, shall comply with the *All Appropriate Inquiries Rule* (40 C.F.R. §3 12) and the applicable standards designed by the American Society for Testing and Materials ("ASTM") as set forth below:

1. Standard Practice for Environmental Site Assessments: ASTM E 1528-06 Screening Assessments;
2. Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process, ASTM E 1527-05; and
3. Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, ASTM E1903-97 (2002rev).

All Phase I and Phase II Environmental Site Assessments submitted as part of the PILOT Application process should substantially conform to the ASTM standards.

C. Deadlines:

Real Property Projects that will have real property improvements to the site by December 31 of the year of the PILOT Application should close on the Real Property Lease Agreement by December 31. The IDB will use the January 1 assessment for the year in which the subject real property is conveyed to the IDB. Leases should be submitted to the IDB's Counsel as early as possible, but no later than December 1 for review.

Personal Property Projects that will have personal property on site by January 1 following the year of PILOT Application should close on the Personal Property Lease Agreement on December 31 of the application year. Leases should be submitted to IDB Counsel as early as possible, but no later than December 1 for review.

Additions and replacements to Personal Property subject to the PILOT incentive beyond those represented in the application may be allowed upon approval by the IDB.

Section XII. Evaluation/Compliance

The IDB will demonstrate that its actions in granting PILOT incentives to specified projects promote the public good. Pursuant to that responsibility the Board requires the project applicant to annually certify that the number of jobs, initial wages, capital investment and IDB Diversity Program commitments are met. The Industrial Development Board will annually (or at such other times deemed appropriate) evaluate each Project receiving a PILOT incentive to ensure compliance with the terms of the Lease.

Each year any individual or entity receiving a PILOT incentive from Memphis and Shelby County shall provide information in the manner described in the PILOT Lease Agreement and complete an Annual Performance Report Form (see Section XVI), including, but not limited to, the following criteria:

- A. Capital Investment - Real Property/Tangible Personal Property
- B. Employee Report - The total number of employees of the company (multiple locations head count), their total salaries for the employees at the Project, the number of employees for the Project who reside in Memphis and Shelby County and their gross annual salaries with benefits delineated. These jobs shall be reported in job classifications as required by the Industrial Development Board.

In addition to A. and B. above, the company will document through the IDB's Diversity Program consultant the following:

- C. Minority/Small Businesses - The dollar amount of contracts awarded to Minority/Small Businesses as committed through the Diversity Program or Jobs Plus Initiative.
- D. Identified Labor Source - The employee retention level (turnover and new hires) of employees emanating from the Memphis Career Center
- E. IDB Diversity Program Companies shall demonstrate a "good faith effort" in complying with their IDB Diversity Plan. They shall document compliance of annual contracting terms and document the employment (turnover and new hires) from the Shelby County Identified Labor Source

If the investment, employment, wages, Diversity Plan and other commitments **do not meet the conditions that the IDB placed on the Project**, the party receiving the PILOT shall be subject to default as specified in the Lease Agreement. Unless extended by the board, Companies may have a two (2) year ramp-up period to reach compliance levels as approved in the PILOT for investment, employment, and wages.

Staff shall provide the IDB, on an annual basis, a compilation of the past year's activities, and the ongoing activities of the projects operating under current leases to the Industrial Development Board.

The Board retains the right to visit and inspect the project during the term of the PILOT to ensure conformance with statements and representations made in the PILOT Lease Agreement and the PILOT Application. Such inspection shall be made during the Project's regular business hours, after reasonable advance notice (at least 48 hours) has been given.

During the inspection, the Board may physically inspect the premises and any improvements thereon, and may require information including, but not limited to, the necessary books, records, and accounts relating to the Project. In addition, **unless prohibited by law**, the Board may obtain copies of any and all reports filed by the Applicant with the State of Tennessee or any other governmental entity, including, without limitation, reports concerning the employees or business operations of the Project.

While compliance inspections may be made at any time during the year, the Board will conduct no less than ten (10) such inspections a year, on Projects to be selected on a random basis, in accordance with the provisions above.

EXHIBIT "E" TO FORM PILOT LEASE

FORM ANNUAL REPORT

SEE ATTACHED



IDB Case # _____

Submit Form _____

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM

PILOT PERFORMANCE REPORT

This form is to be completed even if you are still in "ramp up."

Please complete the following contact information:

Company Name: _____

Local Contact: _____

Title: _____

Local Address: _____

Local Phone: _____

Local Fax: _____

Email: _____

Person Responsible for completing Report (If different from the local contact)

Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Please submit completed and signed materials to:
The Memphis and Shelby County Industrial Development Board
Attention: Joann Massey, Compliance Officer
125 N. Main Street, Suite 468
Memphis, Tennessee 38103 or
joann.massey@memphisidb.gov



DEADLINE: Monday, January 31, 2011 (contracts after 2003)

IDB Case #

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM

PILOT PERFORMANCE REPORT

Totals as of December 31, 2010

Project Data:

PILOT Recipient (Company Name). _____

Address of Property Subject to PILOT: _____

Please attach a copy of the paid receipt(s) for the 2010 Payment-In-Lieu-of-Tax bill (for Real and/or Personal Property).

Capital Investment:

Please identify the total PILOT project investment as of December 31, 2010. Make sure to include any tenant improvements under the Real Property category.

Project-Related Investment	Real Property	Personal Property
Achievement	\$	\$

Job Creation & Wages:

In the box below (and on additional space if needed), please indicate the job creation and wage information totals as they related to the PILOT commitments. Also indicate the total on-site employment as of December 31, 2010.

Position (job classification or title)	Number of Employees (full time)	Annual Wage (salary without benefits)
	Total:	Median Wage:

TOTAL ON-SITE EMPLOYMENT: _____

IDB Case # _____

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE
PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM

PILOT PERFORMANCE REPORT

Totals as of December 31, 2010

I certify that the information and attachments provided are true
and accurate to the best of my knowledge and belief.

Print name and title of authorized company representative

Signature

Date

Phone

Fax

Please submit completed and signed materials to:
The Memphis and Shelby County Industrial Development Board
Attention: Joann Massey, Compliance Officer
125 N. Main Street, Suite 468
Memphis, Tennessee 38103 or
Joann.massey@memphisn.gov



DEADLINE: Monday, January 31, 2011 (contracts after 2003)

For assistance call: 901-576-7160

EXHIBIT "F" TO FORM PILOT LEASE

Vendor Report

THIRD-PARTY EMPLOYMENT CERTIFICATE

I, _____, hereby certify the following:

1. That I am the _____ of _____, a _____ corporation (AEmployer≡).

2. Employer has contracted with _____ (ACompany≡) to provide employees for its location at _____, Memphis, Shelby County, Tennessee (ASite≡).

3. The term for the contract between Employer and Company for the Site is from _____ to _____.

4. During the calendar year _____, Employer provided _____ employees to the Company at the Site with an median wage of _____ per employee.

This employment certificate is executed on this _____ day of _____, 20____ for the benefit of the Memphis and Shelby County Industrial Development Board.

By: _____
Its: _____

::ODMA\PCDOCS\CHAR2\1289126\14

EXHIBIT C

PROJECT BUDGET

FACILITY

General Requirements

Construction Permit
Builders Risk Insurance
Performance Bond
Quality Bond
Advanced Payment Bond

City/County (Local)	State of TN	Electrolux
X		
		X
		X
		X
		X

Sitework

Earth Work - Clearing & Grubbing
Earth Work - Cut & Fill
Underground Utilities
Exterior Fencing
Asphalt Paving
Concrete Paving
Landscaping
Recreational Area

X	X	X
X	X	X
X	X	X
X	X	X
X	X	X
X	X	X
	X	X
	X	X

Concrete

Slabs on grade - Interior
Slab Grinding & Polishing Finish

X	X	X
X	X	X
X	X	X

Masonry

Metals

Structural Steel
Roofing
Siding

X	X	X
X	X	X
X	X	X
	X	X
X	X	X

Wood and Plastics (Cabinets & Chair Rail)

Thermal & Moisture Protection

Doors and Windows

Office Doors
Overhead Doors
Emergency Exit Doors

	X	X
X	X	X
X	X	X

Finishes

Paint
Column Labeling
Ceramic Tile
Carpet
Ceilings

	X	X
	X	X
	X	X
	X	X
	X	X

Specialties

Logo Signage
Dock Labeling

	X	X
	X	X

Moveable Wall Partitions		X	X
Bathroom accessories		X	X
Equipment			
Dock Levelers		X	X
Dock Lights		X	X
Dock Shelters		X	X
Dock Locks		X	X
Furnishing			
Vertical louver blinds		X	X
Special Construction:			
Security Camera System		X	X
Door Access Control		X	X
Fire Alarm System		X	X
Cranes 10 & 20 tons		X	X
Mechanical			
HVAC	X	X	X
Piping (CA, DW, PCW, NG, RW)	X	X	X
Sprinkler System		X	X
Ansul Fire Protection System		X	X
Bathroom Fixtures		X	X
Cooling Towers		X	X
Water Treatment System		X	X
Electrical			
Primary Switch Gear	X	X	X
Secondary Sub Stations	X	X	X
Electrical Drops to Process Equipment		X	X
Interior Lighting	X	X	X
Exterior Lighting	X	X	X
TC Cabinets		X	X
Voice & Data Drops		X	X
Miscellaneous Items		X	X
Site Architectural Design and Engineering			
Site Preparation	X	X	X
Structural Foundation	X	X	X
Office Structure	X	X	X
Warehouse Structure	X	X	X
Manufacturing Structure	X	X	X
Other Miscellaneous Structures	X	X	X

EQUIPMENT

Cavity Line			
Design		X	X
Controls		X	X
Mechanical		X	X
Fabrication		X	X
Installation		X	X

Panel Line

Design
Controls
Mechanical
Fabrication
Installation

	X	X
	X	X
	X	X
	X	X
	X	X

Finish System

Design
Fabrication
Controls
Conveyor
Paint Booth
Oven
"Finish Line"

	X	X
	X	X
	X	X
	X	X
	X	X
	X	X
	X	X

Conveyor Systems

Assembly
Packaging

	X	X
	X	X
	X	X

Presses

TOOLING

Stamping/Injection Tools

Tool Steel
Design
Fabrication

	X	X
	X	X
	X	X

QUALITY

Equipment/Tools

Measuring Equipment
Checking Fixtures

	X	X
	X	X

EXHIBIT D

**FORM OF LIEN WAIVER
TO BE PROVIDED FOR REVIEW BY IDB ASAP**

EXHIBIT E

Electrolux Home Products, Inc. Project Purchasing Policies and Procedures

PART ONE

Requirements for Procurement Using IDB Funds

It is acknowledged and agreed that Part 1 of these IDB Purchasing Policies shall only apply to Purchases made utilizing funds supplied by the City of Memphis ("City") and/or County of Shelby Tennessee ("County"), for which Electrolux is a direct contracting party ("IDB Purchases"), and Part 2 hereof shall apply to Purchases made utilizing funds provided by the State of Tennessee for which Electrolux is a direct contracting party ("State Purchases"), in each case pursuant to the authority granted to Electrolux herein.

I. INTRODUCTION:

The purpose of these Purchasing Policies and Procedures ("IDB Purchasing Policies") is to provide guidance and standards pertaining to the procurement of goods, materials, supplies and services ("Purchases") by The Industrial Development Board for the City of Memphis and County of Shelby, Tennessee ("IDB"), acting as Contract Administrator for the Project as defined in that certain Construction Audit and Reimbursement Agreement between Electrolux Home Products, Inc. ("Electrolux") and the IDB to which these IDB Purchasing Policies are attached.

II. IDB PURCHASING RULES AND RESPONSIBILITIES:

(A) GENERAL RULES:

1. **Subcontracting of Electrolux Duties.** For purposes of these IDB Purchasing Policies, the IDB hereby authorizes Electrolux to undertake all purchasing and procurement for the Project. Electrolux hereby represents and warrants that it shall conduct all such purchasing and procurement in compliance with these IDB Purchasing Policies, and shall certify in writing to the IDB on a quarterly basis such compliance. Electrolux further agrees that upon reasonable advance written request from IDB, Electrolux shall provide access to such records of Electrolux to allow the IDB or its designee to verify such compliance, and Electrolux shall permit the IDB or its designee to make reasonable copies of any non-proprietary records of Electrolux to permit the IDB or its designee to maintain a file substantiating Electrolux's compliance with the IDB Purchasing Policies.
2. **Part 1 General Purchasing Process.** Except as otherwise modified herein, Electrolux shall conduct all purchasing and procurement all IDB Purchases

consistent with the process shown in Appendix A attached to these Purchasing Procedures, and Electrolux shall undertake the following::

- (a) Maintain documentation to serve and evidence a competitive bid process.
- (b) For all bid packages for IDB Purchases, consider in good faith the vendors identified in the vendor list prepared by the IDB as described in Section 4 below ("IDB Vendor List"). Following such consideration, Electrolux shall determine, in its discretion, qualified bidders for all IDB Purchases, which may include potential vendors from the IDB Vendor List as well as potential vendors otherwise identified by Electrolux ("Qualified Bidders"). Except as otherwise provided herein, all bidding will be done on a competitive basis.
- (c) Obtain bids for all IDB Purchases, and establish a commercially reasonable deadline for the submission of such bids ("Bid Deadline"). All IDB Purchases involving \$50,000.00 or greater in a single bid package shall require the solicitation of sealed bids from Qualified Bidders. For purposes hereof, a "sealed bid" shall be a bid properly submitted to Electrolux prior to the Bid Deadline either (i) in a sealed envelope if in writing or (ii) submitted to electronic inbox established by Electrolux for purposes of receiving electronic bids. Electrolux will not open or access such bids prior to the bid deadline. Promptly following the Bid Deadline, the sealed bids shall be opened or accessed by Electrolux, who shall contemporaneously record the name and address of each bidder, and the details of each bid.
- (d) Answer technical questions raised during such bidding process. Electrolux will provide a commercially reasonable reply to such questions and ensure that all Qualified Bidders are provided the same information.
- (e) Following the Bid Deadline, Electrolux shall prepare a decision matrix utilizing Electrolux's normal decision criteria (an example of which is attached hereto as Appendix B), noting all the pertinent data. Electrolux will notify the IDB of the Qualified Bidders and will provide opportunity to the IDB to review and comment upon the evaluation and decision matrix regarding such Qualified Bidders; provided, however, Electrolux shall have final decision making authority regarding the identification and selection of the Qualified Bidder. Electrolux shall then prepare a preliminary recommendation.
- (f) The preliminary recommendation shall then be reviewed with the IDB or its representative, and then submitted to Electrolux's Sourcing Board for final approval. The Sourcing Board shall be comprised of Electrolux's Project Manager, Project Leader, Project Financial Leader, and Project Contract Manager. The Sourcing Board shall, in its discretion, make the

final decision regarding the choice of Qualified Bidder and award of all bids. All Qualified Bidders shall be promptly notified of such final award.

- (g) Any bid not awarded within a period of 180 calendar days from the applicable Bid Deadline shall be considered a "stale bid" and shall be cancelled and re-bid, unless otherwise approved by the IDB.
- (h) As reasonably requested by the IDB, Electrolux will provide reasonable assistance to the IDB or its designee in compiling information necessary for the IDB or such designee to prepare a report regarding the participation level of locally owned and minority owned businesses utilized on the Project, including the overall dollar amount of money paid to local, minority or woman owned business enterprises ("LMWBE") **[Need Definition-to be provided by IDB]** pursuant to the Project.
- (i) If the chosen Qualified Bidder intends to subcontract a portion of the work awarded to such Qualified Bidder, Electrolux shall require that the chosen Qualified Bidder competitively bid such subcontracts utilizing commercially reasonable procedures, and shall further require that the chosen Qualified Bidder consider in good faith vendors identified on the IDB Vendor List for such subcontracts. The chosen Qualified Bidder may request bids from additional vendors not listed on the IDB Vendor List. After providing such good faith consideration, the chosen Qualified Bidder shall choose its subcontractors, if any, in its sole discretion based upon its established criteria.
- (j) All bids and supporting documentation related to such bids will be kept on file by Electrolux for 6 years from the completion of the contract, and shall be made available for inspection by the IDB or its designated representative upon reasonable request for the purpose of confirming compliance herewith.

3. **Prevailing Wage.** All Vendor construction contracts in connection with the Project require compliance with the prevailing wage laws as provided in TCA Section 12-4-401. All such contracts shall require a performance and payment bond in the amount of 100% of the contract amount and shall name IDB as an obligee. These bonds shall be issued by a surety company licensed to do business and issue bonds in Tennessee.

4. **IDB Vendor List.**

- (a) The IDB shall create (or cause to be created) the IDB Vendor List to be considered by Electrolux and/or any chosen Qualified Bidder as described in Section 2 above. The IDB shall provide a public notice, through at least two publications in a newspaper of general circulation, inviting potential vendors to submit relevant information described in this Section 4 to be included on the IDB Vendor List. The IDB Vendor List shall be supplied to Electrolux no later than

_____, 2011. If following such date the IDB Vendor List remains incomplete, the then-current IDB Vendor List, if any, shall be used for purposes of Section 2 above.

(b) The IDB has agreed to perform, or cause to be performed, all steps necessary to identify and include on the IDB Vendor List qualified LMWBE and Electrolux shall consider the same in good faith.

(c) Electrolux may also participate in all vendor qualification efforts used in compiling the IDB Vendor List to the extent Electrolux deems necessary.

(d) From time to time the IDB may update the IDB Vendor List in its reasonable discretion.

(e) A prospective bidder may be placed on the IDB Vendor List by submitting the IDB's required application form to the IDB or its designee. Individuals or firms interested in being placed on the IDB Vendor List should submit their request for the appropriate forms in writing to the IDB or its designee for certification.

(f) Requests for applications will be routed to the IDB or its designee and shall be processed pursuant to the IDB's then current internal policies.

(g) The IDB Vendor List shall include only those vendors which the IDB identifies, using its commercially reasonable discretion, as qualified to participate on the Project.

(h) The IDB Vendor List shall contain the following for each potential bidder:

- (i) Federal I.D. Number
- (ii) Applicant's Name and Address (For both bidding and payment purposes)
- (iii) Type of Organization
- (iv) Trailing 36 month gross revenues
- (v) Persons Authorized to Sign Bids and Contracts
- (vi) Contact Person
- (vii) Type of Business
- (viii) Officers, Owners, or Partners

- (ix) Background Information on Firm
- (x) License Information Where Applicable
- (xi) Classes of Supplies or Services on Which the Firm Desires to Bid
- (xii) Authorized Signature
- (xiii) IRS W-9 Form

(B) PROTEST PROCEDURES

1. PURPOSE:

To identify the process pertaining to the submission, receipt, and review of bidders' protests and the determination thereof.

2. SCOPE:

This procedure covers a Qualified Bidder's protest of any bid award. Only a Qualified Bidder submitting a bid may protest an award decision related to such bid award.

3. PROCEDURES:

(a) SUBMISSION OF PROTEST

(i) Following notice of a bid award, a Qualified Bidder may protest the award by submitting their protest in writing to Electrolux. Electrolux will notify the protesting Qualified Bidder of these protest requirements. A copy of all filed protests shall be forwarded to the IDB within two (2) business days of receipt.

(ii) The written protest submitted must:

- a. Specifically state the Qualified Bidder's objection(s) to the award.
- b. Identify the bid number.
- c. Specifically state the desired remedy.
- d. Be clearly designated PROTEST.
- e. Be properly addressed to Electrolux.

- f. Be received within five (5) business days of the award decision.

(b) REVIEW AND DISPOSITION

- (i) Upon receipt of the written protest:

- a. Electrolux will investigate the protest.

- b. A written decision will be provided to the protesting Qualified Bidder stating the reason(s) for the action taken. A copy of the written decision will be provided to the IDB within two (2) business days of determination.

- (ii) If the protest investigation is inconclusive and more information is necessary, the following will occur:

- a. Electrolux will schedule an informal hearing with the protesting Qualified Bidder to complete the investigation. Notice of any scheduled meeting or hearing shall be provided to the IDB at least two (2) days before the meeting for hearing.

- b. Within five (5) business days from the date of the hearing, a written decision will be provided to the protesting Qualified bidder stating the reason(s) for the action. A copy of the written final decision shall be provided to the IDB within two (2) days of the determination.

- (c) All protest decisions of Electrolux shall be final.

(C) EXCEPTIONS TO/EXEMPTION FROM COMPETITIVE BID REQUIREMENTS

1. The following types of purchases or contracts shall be exempt from the General Rules of Part One (II)(A), and may be directly negotiated by Electrolux with the prospective vendor:

- (a) Contracts for professional services including, but not limited to, legal services.

- (b) Services for which the rate or price is fixed by public authority authorized by law to fix such rates or prices.

- (c) Cooperative purchases with any other federal, state or local government agency or office.

(d) Electrolux may authorize immediate delivery in actual emergencies arising from unforeseen causes, including, but not limited to, delays by contractors, delays in transportation, accident, unanticipated volume of work, force majeure event, threat to public health, welfare, or safety (e.g. tornado, flood, fire, equipment failure), disruption of essential services, or other circumstance beyond the reasonable control of Electrolux. A report of all emergency purchases, together with a full and complete account of the circumstances of the emergency, shall be made by Electrolux and shall be provided to the IDB as soon as reasonably practicable following such emergency.

(e) Sole source/Single source purchases, provided that Electrolux provides advance notice and written justification to the IDB that the goods or services in question are only reasonably available to Electrolux from such sole source/single source. Upon receipt of such notice and written justification, the IDB shall have four (4) business days to deliver to Electrolux a written objection thereto, using its commercially reasonable judgment. Should the IDB fail to so object, the IDB shall be deemed to have waived any objection thereto. If the IDB delivers such written objection, Electrolux and the IDB shall immediately meet to resolve such objection using their respective commercially reasonable good faith discretion.

(f) Purchase of perishable products.

(g) Purchases through other current federal, state, or other local government contracts.

PART TWO

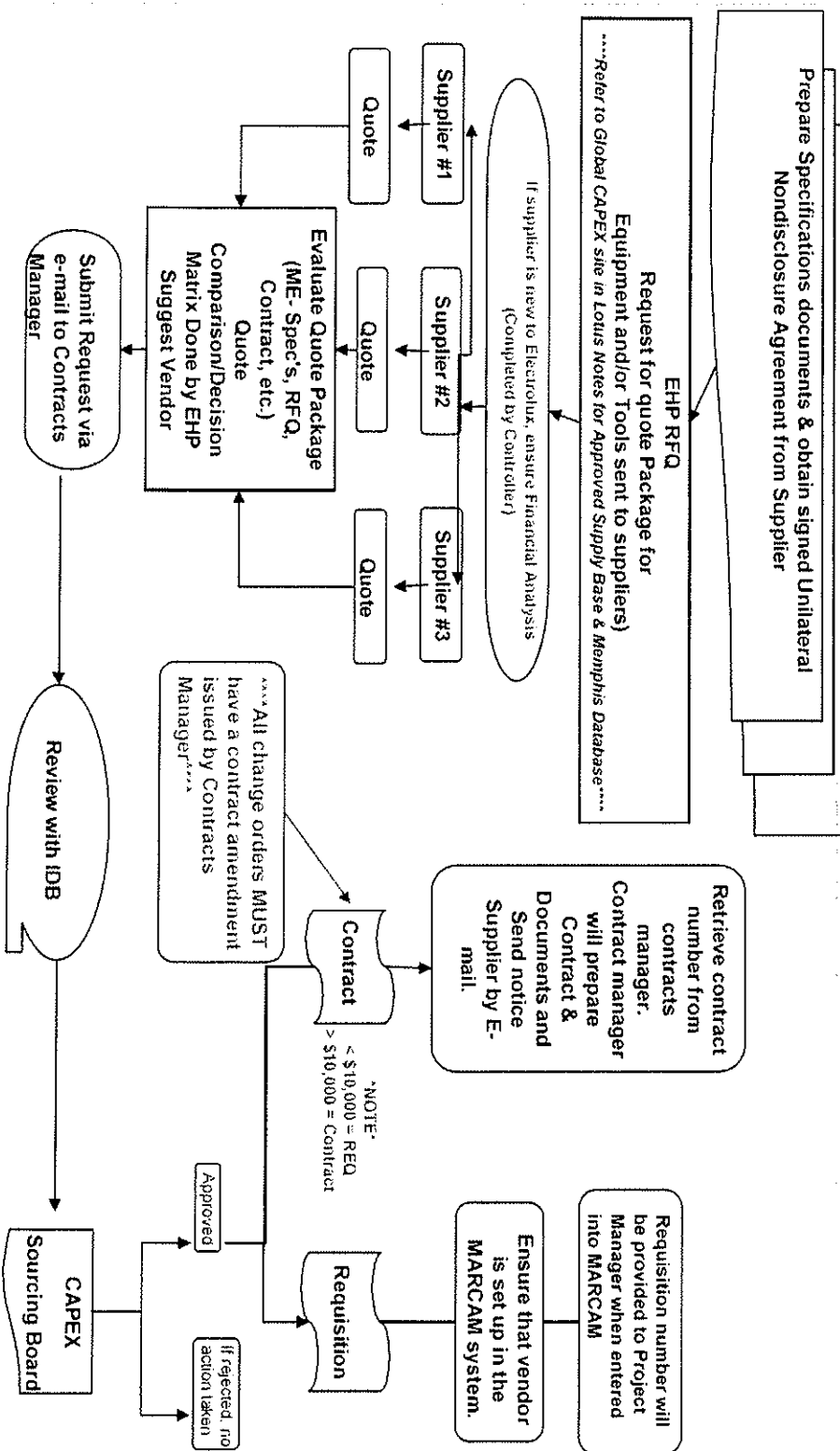
This Part 2 ("State Purchasing Policies") provides guidance and standards to all personnel pertaining to the procurement of goods, materials, supplies, equipment and/or contracted services utilizing state funds for the Project. The State Purchasing Policies hereby incorporate by reference the IDB Purchasing Policies for all State Purchases.

The IDB hereby acknowledges that the State has approved the list of Approved Infrastructure Costs (and the purchases of all equipment) included in the Project Budget shown in Exhibit C of the Construction Reimbursement, Contribution and Audit Agreement between Electrolux, IDB and Port.

Purchasing Process Flow for Major Equipment and/or Tooling

Electrolux
makes life a little easier™

APPENDIX A



Only Enter Data In Orange Cells

[illegible][illegible]

EXHIBIT F

INSURANCE REQUIREMENTS

I. Insurance. Electrolux shall obtain, and maintain at all times during term hereof, the insurance coverage set forth below. Unless otherwise expressly defined herein, capitalized terms set forth in this Exhibit are terms of art, as used in and understood in the insurance industry or are defined terms in the Agreement to which this is attached.

During Construction.

(a) **Builder's Risk.** Until replaced by permanent property insurance, "All Risk" form of Builder's Risk Insurance, in the amount of 100% of the replacement cost value of the Project (the "Builder's Risk Insurance"). The policy shall include coverage for Flood with sub-limits no less than 25% of the replacement cost, unless building or Project is located in a Flood Zone "A", as defined by the National Insurance Flood Plan. If the Project is located in a Flood Zone "A", Electrolux shall maintain Flood limits providing for 20% of the replacement cost. Such insurance policy shall also include coverage for Loss suffered with respect to Electrolux's materials, equipment, machinery, and supplies whether on-site, in transit, or stored off site, with a limit of no less than 100% replacement cost and subject to a minimum limit of \$100,000 for both transit and off site storage provided that Electrolux shall obtain or cause to be obtained additional insurance whenever the value of materials in transit or storage exceed those limits;

(b) **Professional Liability.** Electrolux will require the architect, engineers and all other design professionals retained by Electrolux to purchase and maintain continuous professional liability coverage in the amount of \$5,000,000.00 per claim and \$6,000,000.00 annual aggregate. This policy shall include coverage for bodily injury and property damage and retroactive coverage back to the first date that professional services were provided to the Project. Evidence of this insurance shall be provided by such professionals in the form of an insurance certificate for a period of 4 years after substantial completion of the Project.

(c) **Commercial General Liability and Umbrella Liability coverage,** including but not limited to, coverage for Personal Injury, Bodily Injury, Death, Property Damage, Fire Damage Legal Liability, with limits of not less than \$5,000,000.00 per occurrence and in the annual aggregate. The policies described in this paragraph shall cover, without limitation: independent contractors, contractual liability (covering, to the maximum extent permitted by the commercial general liability policy, Electrolux's obligation to indemnify IDB as required under this Exhibit) and Products and Completed Operations Liability coverage. Electrolux shall add IDB, City, Port Authority, County and State as additional insured.

(d) Worker's Compensation. If applicable, worker's compensation insurance covering Electrolux and its employees at the site to the extent required, and in the amounts required by applicable Laws.

(e) Employers Liability. If applicable in the amount of \$1,000,000 per accident, \$1,000,000 per illness, per employee and \$1,000,000 per illness, in the aggregate.

(f) Contractor's Liability. Electrolux shall cause all contractors to maintain Commercial General Liability coverage, including, without limitation, products and completed operations and Automobile Liability insurance with no less than \$1,000,000 in limits per occurrence and in the aggregate through primary and umbrella liability policies. Electrolux shall also ensure that all subcontractors maintain similar coverage with limits appropriate to the hazard associated with their respective work on the site. All parties engaged in work on the Project shall maintain statutory Workers Compensation, Employer's Liability with limits of at least \$250,000 and any legally mandated disability insurance in force for all employees on the job.

II. Requirements of Insurance Policies.

(a) All insurance policies shall be issued by an insurer or insurers reasonably acceptable to IDB and be authorized in the state where the Project is located. All insurance acquired pursuant to this Exhibit shall be in form, amounts and with coverage and deductibles satisfactory to IDB, in IDB's sole discretion.

(b) The Builder's Risk insurance policies required to be carried pursuant to this Exhibit, and the All Risk required pursuant to this Exhibit, shall name Electrolux as the insured and shall also name IDB as Loss Payee.

(c) The Commercial General Liability, Auto Liability and Employer's Liability and Contractors Liability set forth in this Exhibit shall name IDB, City, County, Port and State as Additional Insureds.

(d) The amount of any deductible under any insurance policy must be reasonably acceptable to the IDB.

(e) Electrolux may provide required insurance under blanket policies. Electrolux shall not maintain any insurance on the Project that does not name IDB as Loss Payee.

(f) Electrolux shall pay the premiums for the insurance policies as the same become due and payable. Electrolux also shall deliver to IDB, within ten (10) days of IDB's request, A CERTIFICATE OR OTHER EVIDENCE OF INSURANCE ACCEPTABLE TO IDB EVIDENCING THE INSURANCE REQUIRED HEREUNDER. Not later than fifteen (15) days prior to the

expiration date of each of the insurance policies Electrolux shall deliver to the IDB a certificate of insurance evidencing renewal of coverage as required herein.

(g) Any insurance maintained pursuant to this Agreement may be evidenced by blanket insurance policies covering the premises and other properties or assets of the Electrolux or its affiliates, may self-insure or utilize a captive insurance company; provided that coverage is maintained in an amount not less than provided in Section I above. IDB, in its reasonable discretion, shall determine whether such blanket policies contain sufficient limits of insurance.

(h) All required policies, shall provide that insurers have waived rights of subrogation against IDB. The required insurance shall be primary without right of contribution from any insurance, which may be carried by IDB.

(i) The required limits are minimum limits established by IDB and nothing contained herein shall be construed to mean the required limits are adequate or appropriate to protect the Electrolux from greater loss.

EXHIBIT G

Permitted Encumbrances

FACILITY SITE:

1. Any taxes for past, present, or future tax years which may become due but which are not presently due and payable because of the existing tax classification of the land as exempt.
2. Easements of record in Book 1345, Page 373; Book 1365, Page 16; Book 2553, Page 453; and Instrument Nos. G5 2092, 03180948 and 03180949, all in the Register's Office of Shelby County, Tennessee.
3. Resolution and Agreement Establishing Conservation Covenants and Restrictions of record at Instrument No. JU 0876 in such Register's Office; provided, however, the title policy to be provided pursuant to the terms of this Agreement shall insure against loss or damage which the Insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and, because of the failure to comply with the terms of that Resolution and Agreement referred to above, (a) denies the Insured the right to construct and maintain any improvements on the Land and/or (b) forces the Insured to demolish or remove any improvements on the Land.
4. Rights of others to access and traverse the Land for the sole purpose of using and maintaining levees and canals leading to the Mississippi River, which levees and canals are not located on the Land.
5. Terms, conditions, and provisions of that certain unrecorded Agricultural Lease Agreement dated January 1, 2010 between the Memphis and Shelby County Port Commission, the City of Memphis, and the County of Shelby, as lessor, and Dewayne Hendrix d/b/a Two Way Gin Company, Inc. and UCC-1 financing statement of record at Instrument No. 10022073 in such Register's Office.

DISTRIBUTION SITE:

1. Any taxes for past, present, or future tax years which may become due but which are not presently due and payable because of the existing tax classification of the land as exempt.
2. Easements of record in Book 3182, Page 269, Book 3186, Page 102, Book 3186, Page 105, Book 4662, Page 352, and EZ 0835; Book 3242, Page 370; Instrument No. F1 2670; Instrument No. K3 4536; Instrument No. 03180949; and Instrument No. 05105782, all in the Register's Office of Shelby County, Tennessee.
3. Resolution and Agreement Establishing Conservation Covenants and Restrictions of record at Instrument No. JU 0876 in such Register's Office; provided, however, the title policy to be provided pursuant to the terms of this Agreement shall insure against loss or damage which the Insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and, because of the failure to comply with the terms of that Resolution and Agreement referred to above, (a) denies the Insured the right to construct and maintain any

improvements on the Land and/or (b) forces the Insured to demolish or remove any improvements on the Land.

4. Rights of others to access and traverse the Land for the sole purpose of using and maintaining levees and canals leading to the Mississippi River, which levees and canals are not located on the Land.
5. Terms, conditions, and provisions of that certain unrecorded Agricultural Lease Agreement dated January 1, 2010 between the Memphis and Shelby County Port Commission, the City of Memphis, and the County of Shelby, as lessor, and Dewayne Hendrix d/b/a Two Way Gin Company, Inc. and UCC-1 financing statement of record at Instrument No. 10022073 in such Register's Office.

EXHIBIT H

STATE GRANT

GRANT AGREEMENT

BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF FINANCE AND ADMINISTRATION AND

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE SBC Project No. 170/000-ELECT (Electrolux Home Products, Inc. Project)

This Grant Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and The Industrial Development Board of the City of Memphis and Shelby County, Tennessee, hereinafter referred to as the "Grantee," is for the provision of constructing and equipping a production facility in Memphis, Tennessee, as further defined in the "SCOPE OF SERVICES" included as Attachment A to this agreement.

The Grantee is A GOVERNMENTAL ENTITY.

The Grantee's place of incorporation or organization is Tennessee.

WHEREAS, the 107th General Assembly authorized the sale of bonds in 2010 Pub. Ch. 277 and appropriated money in 2010 Pub. Ch. 276 to finance this Grant Contract between the Department of Finance and Administration and the Grantee for a total of ninety-seven million dollars (\$97,000,000.00) for the Electrolux Home Products, Inc. Project as provided herein; and,

WHEREAS, the State Building Commission approved the grant at its meeting held on July 14, 2011.

WITNESSETH, in consideration of the mutual promises contained herein, the parties have agreed and do hereby enter into this agreement according to the provisions set out herein.

A. SCOPE OF SERVICES:

- A.1. The Grantee agrees to perform the scope of work in accordance with the estimated cost (Grant Budget line items) and source of funding schedule made a part of this agreement (see Attachment A).

B. GRANT TERM:

- B.1. Grant Term. This Grant Contract shall be effective for the period commencing on July 15, 2011 and ending on July 18, 2014. The State shall have no obligation for services rendered by the Grantee which are not performed within the specified period. The Grant Contract term may be extended by written agreement consistent with the requirements of paragraph D.2 of this agreement.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed ninety-seven million dollars (\$97,000,000.00). The Grant Budget, attached and incorporated hereto as Attachment A, shall constitute the maximum amount due the Grantee for all service and Grantee obligations hereunder. The Grant Budget line-items include all costs associated with the use funds described in this Grant Contract, including, but not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.

- C.2. Compensation Firm. The maximum liability of the State is not subject to escalation for any reason unless this Grant Contract is amended pursuant to section D.2. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended as provided in section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. Upon progress toward the completion of the work, as described in section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs. These invoices shall meet the minimum requirements described in section C.5.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Real Property Administration
Attn: Assistant Commissioner Peter Heimbach
312 Rosa L. Parks Avenue, 22nd Floor
Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Grantee).
 - (2) Invoice Date.
 - (3) Invoice Period (range of dates to which the reimbursement request is applicable).
 - (4) Grant Contract Number (assigned by the State).
 - (5) Grantor
 - (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
 - (7) Grantee Name.
 - (8) Grantee Federal Employer Identification Number
 - (9) Grantee Remittance Address.
 - (10) Grantee Contact for Invoice Questions (name, phone, and email address).
 - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.
- b. The Grantee understands and agrees to all of the following.
- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
 - (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.

- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up twenty five percent (25%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. The Grantee may request revisions of Grant Budget line item amounts by written request, giving full details supporting such request, provided that such revisions do not increase the total Grand Budget amount. Grant Budget line item revisions may not be made without prior written approval of the State, in which the terms of the approved revisions are explicitly set forth. Notwithstanding this provision, however, the Grantee may not allocate less than five million dollars (\$5,000,000) towards expenditures described in Attachment A as "Infrastructure Development." Furthermore, any increase in the Grant Budget grand total amounts shall require an amendment of this Grant Contract.
- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by section C.1, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
 - b. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.9. Unallowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment theretofore made, which are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.
- C.10. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following documentation properly completed.
- a. The Grantee shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once said form is received by the State, all payments to the Grantee, under this or any other contract the Grantee has with the State shall be made by Automated Clearing House (ACH).

- b. The Grantee shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract or the Grantee's Tennessee Edison Registration.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is approved by the appropriate State officials in accordance with applicable State laws and regulations.
 - a. All contracts for the improvement of real property or demolition of any building or structure on real property involving the expenditure of any funds derived from the State concerning this project or projects shall require approval of the plans for such work by the State Building Commission as required by TCA 4-15-101, et. seq.
 - b. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State concerning this project or projects require compliance with the prevailing wage laws as provided in TCA Section 12-4-401, and these projects shall include a performance and payment bond in the amount of 100% of the contract amount. These bonds shall be executed by an insurance company licensed to do business in Tennessee.
 - c. The Grantee shall use its best efforts to amend any existing contracts to include the provisions of Section D.1.b and Section D.5, including the provisions referenced in D.5.
- D.2. Modification and Amendment. Except as specifically provided herein, this Grant Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations.
- D.3. Termination for Convenience. The State may terminate this grant contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Grantee at least sixty (60) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. Should the State exercise this provision, the Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Grantee fails to fulfill its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
 - D.4.a. Option to Complete. If the State terminates the Grantee's contract under sections D.3 or D.4, in addition to any other remedies the State may have, the Grantee shall upon written notice by the state, assign to the State the Grantee's right to prosecute and complete the work set forth in section A.1 and documents incorporated by reference therein. The Grantee shall also assign to the State all rights in any construction or other agreements necessary or desirable to complete the work. The Grantee shall cooperate with the State in coordinating the State's assumption of the work. The decision as to whether to exercise this option and which agreements to assume will be in the State's sole discretion.

Any construction contract with the Grantee with respect to the work set forth in section A.1 shall contain a provision evidencing the consent of the construction contractor to the State's option to complete, and all other agreements with the Grantee or the contractor necessary to effectuate the purpose of the option shall contain similar provisions evidencing consent to the option.

- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Grant Contract pertaining to Prevailing Wage Requirement, Option to Complete, Conflicts of Interest, Lobbying, Nondiscrimination, Public Accountability, Public Notice, Licensure, Records, Monitoring and Procurement (Sections D.1.b, D.4.a, D.6, D.7, D.8, D.9, D.10, D.11, D.12, D.13 and D.16). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Contract, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

This above certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

- D.8. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Public Accountability. If the Grantee is subject to Tennessee Code Annotated, Title 8, Chapter 4, Part 4 or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Grantee shall display in a prominent place, located near the

passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- D.10. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee shall include the statement, "This project is funded under an agreement with the Department of Finance and Administration." Any such notices by the Grantee shall be approved by the State.
- D.11. Licensure. The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.12. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of thirty (30) full years, unless otherwise directed by the Tennessee Comptroller of the Treasury, hereinafter referred to as the "Comptroller", from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the state agency, the Comptroller, or duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting and Financial Reporting for Not-for-Profit Recipients of Grant Funds in Tennessee*, published by the Comptroller and found at <http://www.comptroller1.state.tn.us/ma/finreptmanual.asp>. The records for local governments shall be maintained in accordance with the *Internal Control and Compliance Manual for Tennessee Municipalities*, published by the Comptroller and found at <http://www.comptroller1.state.tn.us/ma/citymanual.asp> and in accordance with GFOA's publication, *Governmental Accounting, Auditing and Financial Reporting*.
- D.13. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller, or their duly appointed representatives.
- D.14. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.15. Annual Report and Audit. The Grantee shall prepare and submit, within six (6) months after the annual closing of the Grantee's records, a separate annual report of its activities funded under this Grant Contract to the commissioner or head of the granting agency, the Comptroller, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives five hundred thousand and no/dollars (\$500,000.00) or more in aggregate federal and/or state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Comptroller or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Comptroller. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Comptroller. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Comptroller, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the

commissioner or head of the granting agency, the Comptroller, and the Commissioner of Finance and Administration and shall be made available to the public.

- D.16. Procurement. If the other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.
- D.17. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.18. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.19. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.20. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.
- D.21. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.22. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
- D.23. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.24. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

- D.25. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Bob Oglesby
State Architect
Department of Finance & Administration
312 Rosa L. Parks Ave., 21st Floor
Nashville, TN 37243
bob.oglesby@tn.gov
Telephone # (615) 741-2388
FAX # (615) 741-6189

Mary-Margaret Collier
Office of State and Local Finance
505 Deaderick Street, 16th floor, Nashville, TN 37243
mary.margaret.collier@tn.gov
Telephone # 615- 401-7872

Paul VanderMeer, Budget and Fiscal Director
Department of Economic and Community Development
312 Rosa L. Parks Ave., 9th floor, Nashville, TN 37243
paul.vandermeer@tn.gov
Telephone # 615-532-1284
FAX # 615-532-1296

The Grantee:

Jill Iglehart, Chairman
The Industrial Development Board of the City
of Memphis and County of Shelby, Tennessee
125 N Main Street, Room 468
Memphis, Tennessee 38103
Telephone # 901-545-5000

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Grant Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Special Condition. As a special condition, no State funds will be requested or utilized by the Grantee for the project which would replace federal funds eligible for the project.
- E. 5. Counterparts. The Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

IN WITNESS WHEREOF:

The Industrial Development Board of the City of Memphis and Shelby County, Tennessee

Jill Iglehart, Chairman

DATE: _____

APPROVED:

STATE OF TENNESSEE

Robert Oglesby, State Architect

DATE: _____

DATE: _____

William

F.

Hagerty,

Commissioner

Department of Economic & Community Development

DATE: _____

Mark

Emkes,

Commissioner

Department of Finance & Administration

Justin P. Wilson
Comptroller of the Treasury

DATE: _____

FOR FORM AND LEGALITY:

Robert E. Cooper, Jr.
Attorney General and Reporter

DATE: _____

ATTACHMENT A
SBC Project No. XXX/XXX-XX-2011

<u>Description</u>	<u>Estimated Cost</u>
Engineering/Planning for Site Preparation <i>(Professional services contracts required during design and construction of the various projects.)</i>	\$2,850,000
Infrastructure development <i>(Site access roads and rail. Utility connections brought to the required point on the site)</i>	\$5,000,000
Facility Construction <i>(Building including, but not limited to, stone pad, foundations, steel, roofing, mechanical, electrical, plumbing and all finish work necessary for a complete functional building. Site preparation and delineation; including ut not limited to; earth work - clearing & grubbing, earth work - cut & fill, underground utilities, exterior fencing, asphalt paving, concrete paving, landscaping, and recreational area)</i>	\$40,000,000
Equipment For Facility <i>(Equipment necessary for an appliance production including, but not limited to, test chambers, press and paint operation machinery, fabrication and assembly lines.)</i>	\$49,150,000
TOTAL	\$97,000,000

EXHIBIT A

FACILITY SITE AND DISTRIBUTION SITE

FACILITY SITE:

LEGAL DESCRIPTION OF PART OF THE CITY OF MEMPHIS, TENNESSEE, COUNTY OF SHELBY, TENNESSEE AND THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION PROPERTY AS RECORDED PER SPECIAL WARRANTY DEED NO. 04017823 IN THE SHELBY COUNTY REGISTER'S OFFICE, BEING PART OF LOTS 11, 13, AND 14 AS SHOWN ON THE PLAT OF THE ENSLEY PLANTATION OF RECORD IN PLAT BOOK 3-PAGES 59 AND 60 IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE, ALL LYING IN THE CITY OF MEMPHIS, SHELBY COUNTY, TENNESSEE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET 1/2 INCH REBAR IN THE WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD (PUBLIC PAVED ROAD, 84' R.O.W.) AS DEDICATED PER INSTRUMENT NO. 03180949, SAID POINT BEING LOCATED 2,366.51 FEET SOUTH AND 371.03 FEET WEST OF THE TANGENT INTERSECTION OF THE CENTERLINES OF PAUL R. LOWRY ROAD AND RIVERPORT ROAD, SAID POINT OF BEGINNING BEING FURTHER LOCATED AT TENNESSEE STATE PLANE COORDINATES OF 291699.07 FEET NORTH AND 726137.90 FEET EAST (NAD 83) AND SAID POINT OF BEGINNING ALSO BEING THE SOUTHEAST CORNER OF THE MEMPHIS, LIGHT, GAS, AND WATER PROPERTY AS RECORDED PER SPECIAL WARRANTY DEED NO. HB2558; THENCE SOUTH 07 DEGREES 54 MINUTES 21 SECONDS WEST - 2,984.67 FEET ALONG THE WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD TO A SET 1/2 INCH REBAR ON A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 1,442.00 FEET AND A CENTRAL ANGLE OF 10 DEGREES 23 MINUTES 19 SECONDS; THENCE SOUTHWESTWARDLY ALONG THE ARC A DISTANCE OF 261.46 FEET (CHORD BEARING AND DISTANCE OF SOUTH 02 DEGREES 42 MINUTES 41 SECONDS WEST-261.10 FEET) TO A SET 1/2 INCH REBAR; THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD, NORTH 64 DEGREES 53 MINUTES 58 SECONDS WEST - 1,310.70 FEET TO A SET 1/2 INCH REBAR; THENCE NORTH 54 DEGREES 21 MINUTES 03 SECONDS WEST - 1,224.94 FEET TO A SET 1/2 INCH REBAR ON THE NORTH LINE OF A FORMER 400 FOOT TVA EASEMENT NOW OWNED BY THE CITY OF MEMPHIS, TENNESSEE AND SHELBY COUNTY, TENNESSEE PER INSTRUMENT G52092; THENCE NORTH 64 DEGREES 47 MINUTES 32 SECONDS WEST, A DISTANCE OF 174.75 FEET ALONG THE NORTHERLY LINE OF SAID FORMER TVA EASEMENT TO A SET 1/2" REBAR; THENCE LEAVING THE NORTHERLY LINE OF SAID FORMER TVA EASEMENT, NORTH 34 DEGREES 20 MINUTES 39 SECONDS WEST, A DISTANCE OF 708.25 FEET TO A SET 1/2" REBAR; THENCE NORTH 11 DEGREES 45 MINUTES 28 SECONDS EAST, A DISTANCE OF 639.44 FEET TO A SET 1/2" REBAR; THENCE NORTH 22 DEGREES 50 MINUTES 12 SECONDS EAST, A DISTANCE OF 1,475.47 FEET TO A SET 1/2" REBAR; THENCE NORTH 14 DEGREES 31 MINUTES 04 SECONDS EAST, A DISTANCE OF 938.66 FEET TO A SET 1/2" REBAR IN THE NORTH LINE OF THE CITY OF MEMPHIS, TENNESSEE, COUNTY OF SHELBY, TENNESSEE AND THE

MEMPHIS AND SHELBY COUNTY PORT COMMISSION PROPERTY AS RECORDED PER SPECIAL WARRANTY DEED NO. 04017823 AND SOUTH LINE OF THE COUNTY OF SHELBY AND CITY OF MEMPHIS PROPERTY AS RECORDED PER QUIT CLAIM DEED 03180949; THENCE SOUTH 82 DEGREES 05 MINUTES 39 SECONDS EAST, A DISTANCE OF 1,155.50 FEET ALONG THE SOUTHERLY LINE OF SAID COUNTY OF SHELBY AND CITY OF MEMPHIS PROPERTY AS RECORDED PER QUIT CLAIM DEED 03180949 TO A SET 1/2" REBAR; THENCE LEAVING SAID NORTHERLY LINE, SOUTH 07 DEGREES 59 MINUTES 04 SECONDS WEST, A DISTANCE OF 935.29 FEET TO A SET 1/2" REBAR; THENCE SOUTH 82 DEGREES 05 MINUTES 39 SECONDS EAST, A DISTANCE OF 769.49 FEET TO A SET 1/2" REBAR ON THE NORTHWEST CORNER OF THE AFORESAID MEMPHIS, LIGHT, GAS, AND WATER PROPERTY; THENCE SOUTH 07 DEGREES 54 MINUTES 21 SECONDS WEST, A DISTANCE OF 350.00 FEET TO A FOUND 1/2" REBAR ON THE SOUTHWEST CORNER OF SAID MEMPHIS, LIGHT, GAS, AND WATER PROPERTY; THENCE SOUTH 82 DEGREES 05 MINUTES 39 SECONDS EAST - 500.74 FEET (CALL=500.00' PER MLGW DEED) TO THE POINT OF BEGINNING.

CONTAINING 9,496,080 SQUARE FEET OR 218.000 ACRES, MORE OR LESS.

DISTRIBUTION SITE:

LEGAL DESCRIPTION OF PART OF THE CITY OF MEMPHIS, TENNESSEE AND COUNTY OF SHELBY, TENNESSEE PROPERTIES AS RECORDED PER DEEDS OF RECORD IN BOOK 3937 - PAGE 205 (PARCEL 5), BOOK 4007 - PAGE 594, AND BOOK 4026 - PAGE 271, BEING PART OF LOTS 19, 22, 24, 25, 26, AND THE STEPHENSON LOT AS SHOWN ON THE PLAT OF THE ENSLEY PLANTATION OF RECORD IN PLAT BOOK 3-PAGES 59 AND 60 IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE, ALL LYING IN THE CITY OF MEMPHIS, SHELBY COUNTY, TENNESSEE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET 1/2 INCH REBAR IN THE SOUTHEASTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD CUL DE SAC (PUBLIC PAVED ROAD, CUL DE SAC R.O.W. VARIES) AS DEDICATED PER INSTRUMENT NO. 03180949, SAID POINT BEING LOCATED 12,370.90 FEET SOUTH AND 991.87 FEET WEST OF THE TANGENT INTERSECTION OF THE CENTERLINES OF PAUL R. LOWRY ROAD AND RIVERPORT ROAD, SAID POINT OF BEGINNING BEING FURTHER LOCATED AT TENNESSEE STATE PLANE COORDINATES OF 281694.68 FEET NORTH AND 725517.05 FEET EAST (NAD 83); THENCE LEAVING THE DEDICATED RIGHT-OF-WAY OF PAUL R. LOWRY ROAD, SOUTH 17 DEGREES 14 MINUTES 17 SECONDS EAST - 4958.84 FEET ALONG THE SOUTHEASTWARD PROJECTION OF THE EASTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD TO A SET 1/2 INCH REBAR; THENCE LEAVING THE SOUTHEASTWARD PROJECTION OF SAID EASTERLY RIGHT-OF-WAY, SOUTH 72 DEGREES 45 MINUTES 43 SECONDS WEST - 307.88 FEET TO A SET 1/2 INCH REBAR; THENCE NORTH 62 DEGREES 31 MINUTES 48 SECONDS WEST - 8,576.46 FEET TO A

SET ½ INCH REBAR LYING APPROXIMATELY 15 FEET EAST OF THE TOE OF THE LEVEE BERM ON THE EAST SIDE OF THE MISSISSIPPI RIVER LEVEE; THENCE FOLLOWING A LINE LYING GENERALLY 15 FEET EAST OF THE TOE OF SAID LEVEE BERM AS FOLLOWS: NORTH 34 DEGREES 46 MINUTES 10 SECONDS EAST - 2,569.86 FEET TO A SET ½ INCH REBAR; THENCE NORTH 23 DEGREES 43 MINUTES 02 SECONDS EAST - 972.20 FEET TO A SET ½ INCH REBAR IN THE SOUTHERLY LINE OF THE NUCOR STEEL MEMPHIS, INC PROPERTY AS RECORDED PER INSTRUMENT NO. 06100440 AND BEING 15.00 FEET SOUTHEAST OF A FOUND ½ INCH REBAR; THENCE SOUTH 64 DEGREES 51 MINUTES 50 SECONDS EAST - 4,948.18 FEET ALONG THE SOUTHERLY LINE OF THE NUCOR STEEL PROPERTY AND EASTWARD PROJECTION THEREOF TO A POINT IN THE WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD, SAID POINT ALSO BEING AT THE BEGINNING OF A CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 84 DEGREES 49 MINUTES 45 SECONDS WEST, A RADIAL DISTANCE OF 50.00 FEET; THENCE SOUTHWESTWARDLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00 MINUTES 24 SECONDS, A DISTANCE OF 9.61 FEET (CHORD BEARING AND DISTANCE OF SOUTH 00 DEGREES 19 MINUTES 57 SECONDS WEST- 9.59 FEET) TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 170 DEGREES 12 MINUTES 51 SECONDS; THENCE SOUTHWESTWARDLY, SOUTHWARDLY AND SOUTHEASTWARDLY, EASTWARDLY AND NORTHEASTWARDLY ALONG THE ARC, A DISTANCE OF 148.54 FEET (CHORD BEARING AND DISTANCE OF SOUTH 79 DEGREES 16 MINUTES 16 SECONDS EAST-99.64 FEET) TO THE POINT OF BEGINNING.

CONTAINING 25,367,562 SQUARE FEET OR 582.359 ACRES, MORE OR LESS.

EXHIBIT B

FORM PILOT LEASE

SHELBY COUNTY REGISTER'S NUMBER: _____

IDB CASE NUMBER(S): _____

REAL PROPERTY LEASE AGREEMENT

This Real Property Lease Agreement (herein "Lease"), made and entered into effective as of _____, 201____ (the "Effective Date"), is by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public not-for-profit corporation of the State of Tennessee, with an office in Memphis, Tennessee (the "Lessor"), and ELECTROLUX HOME PRODUCTS, INC., a corporation organized and operating under the laws of the State of Delaware and authorized to do business in the State of Tennessee (the "Lessee"). The Lessee and the Lessor may from time to time be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

- A. Lessor, Lessee, the State of Tennessee (the "State"), Shelby County, Tennessee (the "County") and the City of Memphis, Tennessee (the "City", Lessor, the State, County and City hereinafter collectively being the "Public Authorities") have entered into that certain Site Location and Development Agreement dated as of December 15, 2010 (the "Site Agreement"), pursuant to which the Public Authorities have agreed to provide certain incentives to Lessee, as more specifically set forth in the Site Agreement.
- B. Lessor has acquired from Lessee, for nominal consideration, certain real property in Shelby County, Tennessee, comprised of an approximately 218-acre tract (the "Facility Site") as more specifically described in Exhibit "A", together with Improvements (hereinafter defined) thereon, all subject only to the encumbrances described in Exhibit "B" (the "Permitted Encumbrances"), and agrees to lease the Facility Site back to Lessee under the terms of this Lease.
- C. Lessor is organized pursuant to the provisions of Sections 7-53-101 to 7-53-314, inclusive, of the Tennessee Code Annotated, as amended (the "Act"), and is authorized thereunder in order to fulfill its public purpose of contributing to increased employment and increasing manufacturing in the City of Memphis and Shelby County, Tennessee, to acquire, renovate, construct, equip, and furnish the Facility Site, acting by and through Lessee as its agent for such work, to the end that Lessee may obtain full use and possession thereof.
- D. Pursuant to the provisions of Tennessee Code Annotated Section 7-53-305(b), Lessor has found, and does hereby find, that the PILOT payments as provided for herein are in furtherance of the Lessor's public purposes as defined in said section.
- E. Lessor also has found, and does hereby find, that the Facility Site and Improvements (the "ADemised Premises," hereinafter defined) qualify for the Community Reinvestment Credit

(hereinafter defined) as a Community Reinvestment Property as defined by the Lessor and in accordance with the Lessor's Policies and Procedures (hereinafter defined); and, further, that it is in the public interest that the assessment base utilized for the purpose of computing the payments in lieu of taxes hereunder be established at a pre-acquisition value as set forth in Section 6.02(a) of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, the sufficiency of which is acknowledged and agreed, intending to be legally bound, the LESSOR AND LESSEE AGREE AS FOLLOWS:

The Recitals are included herein as if copied verbatim. Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and covenants and agreements hereinafter contained and to be kept and performed by Lessee, does hereby, by these premises, demise, lease, and let unto Lessee, for the Term and upon the conditions stated herein, the Facility Site as the Facility Site is improved and will be further improved as more particularly described hereinafter.

ARTICLE I

DEFINITIONS

In addition to words and terms elsewhere defined in this Lease, the following words and terms as used in this Lease shall have the following meanings, unless some other meaning is plainly intended or unless defined in the Policies and Procedures (it being understood that in the event of a conflict between the definitions contained in the Policies and Procedures and this Lease, the definitions contained in this Lease shall control), as defined below:

Additional Charges: As defined in Section 4.02.

Application: That certain Application for PILOT City of Memphis and Shelby County, filed with Lessor on or about January 10, 2011, as such application was approved at the Lessor's board meeting on January 12, 2011 with such approval being corrected at Lessor's January 19, 2011 meeting. The Application in its entirety is incorporated herein by reference. Any capitalized terms used herein which are defined in the Application shall have the same definition herein as in the Application. Upon reasonable request by Lessor, Lessee shall add or correct an omission in the Application.

Board Counsel: Mark E. Beutelschies, Assistant Shelby County Attorney, 999 S. Shady Grove Road, Suite 500, Memphis, Tennessee 38120, or such other person as the Lessor may hereafter designate in writing to the Lessee.

Community Reinvestment Credit: The roll-back of the tax assessment whereby the payment in lieu of taxes for the Demised Premises is based wholly or partially upon the pre-acquisition value of the Demised Premises as of January 1, 2011, without regard to any Improvements thereon, as provided in Sections 6.02(a) hereof.

Construction Agreement: That certain Construction Reimbursement, Contribution and Audit Agreement dated July __, 2011 by and between Lessor, Lessee and the Memphis and Shelby County Port Commission.

Default Rent: Rent determined as set forth in 9.07(a), as applicable.

Demised Premises: The Facility Site, together with the Improvements thereupon at the time of the execution of this Lease, or at any time thereafter constructed or affixed to the Facility Site.

Environmental Laws: As defined in Section 12.01.

Facility Site: Approximately 218 acres of real property more specifically described in Exhibit "A" attached to this Lease, including any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining to thereto.

Improvements: The improvements constructed upon the Facility Site and affixed thereto as part of the realty so as to become real property fixtures, as provided for in the Application and Construction Agreement.

Jobs, Wages and Capital Investments: The following items used in the Project: Net New Jobs (1,240); Average Annual Wage (\$30,472 excluding any benefit costs to Lessee); and Capital Investment made by or on behalf of Lessee (real property - \$8,000,000 in Community Reinvestment Credits and \$69,000,000 in tenant improvements, plus an additional undetermined amount for on site preparation; personal property - \$126,000,000; additional annual investments of real and/or personal property not to exceed \$___ million per annum or cumulative of \$___ million, necessary for the successful completion and operation of the Facility as originally intended; total initial capital investment by or on behalf of Lessee of \$195,000,000.00). All totals set forth herein are approximations, and have been previously disclosed to the Lessor in the Application.

Lender: Any lending institution which has loaned money or extended credit to Lessee which indebtedness and/or obligations of Lessee are secured by a deed of trust or other security instrument encumbering the Demised Premises or Lessee's leasehold interest therein, together with its successors and assigns, and written notice of the name and address of such Lender (or such successors and assigns) has been received by Lessor. All references to such terms shall include the Lender's successors and assigns who shall have furnished notice of their Encumbrance (as hereinafter defined) to the Lessor in accordance with the terms of this Lease.

Lessee: The legal entity or natural person identified in the first paragraph of this Lease, or any permitted transferee or assignee pursuant to Section 3.06 below.

Mayor's Letter: The letter from the Mayor of the City of Memphis and/or the County of Shelby, a copy of which is attached hereto as Exhibit "C".

Municipality: Any incorporated city or town, with the exception of the City of Memphis, that is located in Shelby County, Tennessee.

Permitted Encumbrances: The encumbrances on the Demised Premises as described in Exhibit "B" attached hereto and incorporated herein.

Personal Property PILOT Lease: One or more lease agreements to be entered into between Lessor and Lessee in connection with the personal property associated with the Project that shall be on terms and conditions substantially similar to this Lease, and otherwise consistent with the Site Agreement and Application.

PILOT: The "payment in lieu of taxes" program, such payments to be paid as provided in Section 6.02 hereof.

Policies and Procedures: Lessor's Policies and Procedures which are attached hereto as Exhibit "D". In the event that the Policies and Procedures are inconsistent with or in conflict with the Site Agreement or Application, the terms and provisions of the Policies and Procedures as amended by Lessor's Project authorization contained in the IDB minutes dated January 12, 2011 and January 19, 2011, as amended, shall control.

Project: The acquisition of the Facility Site by Lessor, the leasing of the Facility Site pursuant to this Lease, and the work of constructing the Improvements on the Facility Site, as well as the expenditure of the Capital Investment and leasing of all applicable personal property pursuant to the Personal Property PILOT Lease, the creation and maintenance and/or retention of the Jobs and the Wages and the compliance with all Special Conditions pursuant to the terms of this Lease, all as more particularly set out in the Application.

Ramp-Up Period: The period defined in Section 5.04(a).

Reconveyance Right: The Reconveyance Right described in Section 11.01 below.

Site Agreement: The Site Location and Development Agreement dated December 15, 2010 by and between Lessor and Lessee, amongst others as more specifically set forth in the Recitals above.

Special Conditions: The conditions of the Lessor's approval of the application as identified in Lessor's Board of Director's minutes dated January 12, 2011, as amended.

Start of Production: The date on which the Lessee commences commercial production at the Facility Site which shall be confirmed and memorialized in writing between Lessor and Lessee.

Term: The term of this Lease, as set out in Article III hereof.

ARTICLE II CONSTRUCTION AND/OR RESTORATION

Section 2.01. Construction and/or Restoration of Improvements.

(a) Prior to the Effective Date, Lessee has caused the Project to be undertaken and the Improvements to be completed in accordance with Lessee's plans and specifications, the Site Agreement, the Application, and the Construction Agreement.

Lessor shall only be liable for any such contracts, agreements, purchase orders, and other related documents as provided in the Construction Agreement.

(b) Any development or construction signs located at or on the Facility Site shall read: "The City of Memphis, County of Shelby, and The Industrial Development Board of the City of Memphis and County of Shelby, Tennessee have provided financial incentives and other assistance for this project."

Section 2.02. Rights against Contractors, Etc.

(a) Lessee covenants and agrees that it will use commercially reasonable efforts to insure that the Improvements that are not completed prior to the Effective Date are completed diligently in a good and workmanlike manner. To the extent the following inure to Lessor's benefit, Lessor hereby assigns to Lessee (i) all warranties and guaranties of any and all contractors, subcontractors, suppliers, or architects for the furnishing of labor or material or supervision in connection with the Improvements or any part thereof, and (ii) any and all rights or causes of action against any of the foregoing. If requested, Lessor will execute and deliver instruments of assignment to Lessee to accomplish the foregoing.

(b) In the event of default of any contractor or subcontractor under any contract made by Lessee in connection with the Improvements, Lessee may, at its expense, either in its own name or in the name of Lessor, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, surety, or supplier which Lessee deems reasonably necessary, and in such event Lessor hereby agrees to cooperate fully with Lessee and, at Lessee's expense, to take all action necessary to effect the substitution of Lessee for Lessor in such action or proceeding. Lessee shall indemnify Lessor from all claims, damages, liability, reasonable attorney's fees actually incurred, and court costs if Lessee shall prosecute or defend any such action or proceeding or take any other action in Lessor's name. Lessor shall promptly remit any net amounts in excess of the funds expended by the Lessor recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing to Lessee. Notwithstanding the foregoing, Lessor shall undertake no such action in connection with the above, nor advance funds related thereto, without the prior written request by Lessee.

Section 2.03. Completion. Subject to the provisions of Section 9.02 hereof, if applicable, Lessor and Lessee agree to utilize their commercially reasonable efforts to complete the Improvements no later than the expiration of the Ramp-up Period unless the time to complete is extended in writing by Lessor, which extension will not be unreasonably withheld, conditioned or delayed.

Section 2.04. Statutory Liens or Liens Created Under Common Law.

Lessee shall not do or suffer to be done anything whereby Lessor's interest in and to the Demised Premises or any part thereof may be encumbered by any mechanics' or materialmen's statutory liens or any similar lien created by statute or at common law, and if whenever and as often as any mechanics' or materialmen's lien or similar lien is filed against the said Demised Premises, or any part thereof, purporting to be for or on account of any labor or materials or services furnished in connection with any work in, or about the Demised Premises done by, for, on or under the authority of Lessee or anyone claiming by, through or under Lessee, Lessee shall promptly procure the record satisfaction and release of same to Lessor's satisfaction.

Notwithstanding the foregoing, upon the filing of a lawsuit to enforce any mechanics' or materialmen's liens, Lessee shall have the right to contest any such mechanics' or materialmen's lien or any such other statutory or common law lien claim filed against the Demised Premises, or any part thereof, and Lessor hereby authorizes Lessee to act on Lessor's behalf as necessary to so contest, provided that Lessee notifies Lessor in writing of its intention so to do, diligently prosecutes any such contest, files a statutory or other bond sufficient to remove the lien from the Demised Premises or otherwise provides reasonably satisfactory assurance or adequate collateral to Lessor securing any payment of any amounts determined to be due by Lessee, at all times effectually stays or prevents any official or judicial sale of the Demised Premises under execution or otherwise, and pays or otherwise satisfies any judgment adjudicating or enforcing such contested mechanics', materialmen's or other lien, and thereafter promptly procures record satisfaction and release thereof reasonably satisfactory to Lessor.

In no event shall Lessee allow any lawsuit to enforce mechanic's or materialmen's lien or such other statutory or common law lien to exist against the Demised Premises. Lessee shall discharge or remove any such lien by bonding or otherwise promptly upon notice by Lessor to do so. No provision of this Lease shall be construed as to constitute Lessee as the agent of or authorized to act for Lessor in doing any repairs, alterations, construction or any other kinds of work on the Demised Premises. Any person doing work upon or furnishing materials to or for such work shall look only to Lessee and Lessee's interest in the Demised Premises for payment thereof. Notwithstanding the foregoing, it is expressly agreed that this paragraph shall have no application to any work, repairs, alterations or construction performed by or for Lessor at Lessor's request.

ARTICLE III TERM AND CONCURRENT AGREEMENTS

Section 3.01. Term. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, at the rent set forth herein, the Demised Premises. Subject to the terms and provisions herein contained, this Lease shall be and remain in full force and effect for a term of fifteen (15) years from the Effective Date ("Term").

Section 3.02. Use of Project and Compliance with Laws. Lessee shall promptly comply or cause compliance with or obtain waivers of all laws, ordinances, orders, rules, regulations, and requirements of duly constituted public authorities applicable to the Project, at no expense to Lessor, whether or not the same are foreseen or unforeseen, ordinary or extraordinary. Lessee shall throughout the term of this Lease cause the Project (as it relates to the Demised Premises) to be used

in a manner that will constitute a "project" within the meaning of Section 7-53-101 of the Act. The Lessee has represented to Lessor in the Application, that it will (a) complete and use the Project for the purposes set out in the Application, and (b) create and/or retain the Jobs at the Wages and make the Capital Investment all as set out and defined in the Application. Any proposed changes in the use and operation of the Project or of the Demised Premises must be submitted to Lessor for advance written approval. Pursuant and subject to the provisions of Article IX of this Lease, Lessor reserves the right to terminate this Lease if the use of the Project becomes materially inconsistent with the representations summarized above and as stated in the Application. All such representations in the Application shall be deemed warranties under this Lease and are incorporated herein by reference.

Section 3.03. Contesting Laws. Lessee shall not be required to comply or cause compliance with any material and applicable laws, ordinances, orders, rules, regulations, or requirements, so long as Lessee shall give written notice to Lessor, and at its expense, shall be contesting the same or the validity thereof in good faith and in accordance with applicable law. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee therein as Lessee may reasonably request. At Lessor's option, Lessee shall provide Lessor with such assurance reasonably satisfactory to Lessor to indemnify Lessor from all claims, damages, liability, reasonable attorney's fees actually incurred, and court costs if Lessee shall pursue any claim or right in Lessor's name.

Section 3.04. Lessor's Title to Demised Premises; Conveyance Obligations. Lessor has or will acquire title to the Demised Premises from Lessee subject only to the Permitted Encumbrances. Provided that no uncured Event of Default (as defined in Section 9.01 hereof) exists under this Lease, Lessor will not, without the prior written consent of Lessee, directly or indirectly create or consent to the creation or existence of any lien or encumbrance (other than as requested by Lessee in writing) upon the Demised Premises or Lessor's interest therein, or convey title to the Demised Premises in any manner whatsoever, except as otherwise provided herein or as requested or approved by Lessee in writing. Lessor will promptly consent to and allow Lessee to place any easements, conditions, covenants, use restrictions or other encumbrances (including, but not limited to, the dedication of a portion or portions of the Demised Premises for public use) on the Demised Premises which Lessee believes to be necessary, appropriate or desirable in connection with the operation of the Project. Lessor will promptly execute any and all documents reasonably requested by Lessee to grant any such easements, conditions, covenants, use restrictions or other encumbrances, all at the expense of Lessee, subject to Lessor's approval of such documents which consent and approval will not be unreasonably withheld or delayed, and provided that such documents shall not impose any personal liability on Lessor. Lessor shall have no obligation to obtain any third-party consent or approval with respect to any such easements, conditions, covenants, use restrictions or other encumbrances on the Demised Premises which are requested or placed by Lessee, as aforesaid.

Section 3.05. Additional Encumbrances; Subordination.

(a) Provided that no uncured Event of Default exists under this Lease and Lessor is notified in writing of the details of any proposed transaction prior to the closing of such transaction, Lessee shall, at all times, have the right to encumber by mortgage(s), deed(s) of trust

and security agreement(s) or other proper instrument(s) in the nature thereof its right to use and occupy the Demised Premises, or portions thereof; but any and all such encumbrances of Lessee's leasehold estate shall, at all times be subject to the fee interest of Lessor (unless subordinated to such encumbrances as hereinafter provided) and shall impose no personal liability on Lessor, and Lessee shall indemnify Lessor against any losses, costs or expenses which Lessor may incur as the result of executing any such encumbrance or subordination agreement requested by Lessee. Upon the execution and recordation of any such mortgage(s), deed(s) of trust, security agreement(s), financing statement(s) or other instruments, Lessor shall be notified in writing that such deed(s) of trust, security agreement(s), financing statement(s) or other instruments have been so given and executed by Lessee, and Lessor shall also be furnished with the address of the Lender(s) involved in such encumbrance to which copies of notices are to be mailed. If so requested by any Lender, Lessor hereby covenants that it will thereafter contemporaneously mail to such Lender(s) a duplicate copy of any and all notices in writing which Lessor may, from time to time, give or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Unless and until such notice is mailed to such Lender(s), no action shall be taken by Lessor which would be prejudicial to such deed(s) of trust, security agreement(s), financing statement(s) or other instrument(s) in the nature thereof, or to the rights of the Lender(s) thereunder. If a Lender requires Lessor to execute any certificate or other closing documents, Lessee shall be responsible to reimburse Lessor's actual expenses, costs, and reasonable attorney fees incurred in reviewing closing documents or otherwise expended by Lessor as a result of Lessee's transactions. Lessor shall have no obligation to obtain any third-party consent or approval with respect to any such liens, encumbrances or easements on the Demised Premises, and Lessee hereby waives any right to consent to or approve of any of the same.

(b) Such Lender(s) may, at its (their) option, during the Term hereof, pay any of the rent due hereunder or do any other act or thing required of Lessee by the terms hereof, or do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof, so as to prevent the termination of this Lease. All payments so made and all things so done and performed, by any such Lender(s) shall be as effective to prevent a termination of the rights of the Lessee hereunder as the same would have been if done and performed by the Lessee instead of by any such Lender(s). Such Lender(s) shall in no event, however, be required to pay the Basic Rent in order to keep this Lease in full force and effect.

(c) If requested by Lessee, Lessor shall subordinate its fee interest in the Demised Premises to any encumbrances placed on the Demised Premises in favor of any Lender(s), and to the rights, title and interest of any Lender(s) in and to the Demised Premises, such subordination to be in form and content reasonably requested by Lessee on behalf of such Lender(s). Additionally, Lessor agrees to execute a pledge or security agreement(s) in favor of such Lender(s) encumbering the interest of Lessor if required by Lessee. However, in the event of Lessor's execution of any such subordination, pledge, security agreement or other document, Lessee agrees to pay the reasonable cost and expense of Lessor in connection therewith, including, without limitation, reasonable attorney fees, and to indemnify Lessor against any losses, costs or expenses which Lessor may incur as a result of executing any such document or instrument. Any such encumbrances shall impose no personal liability on Lessor.

Lessor acknowledges that the interests of any Lender(s) in the Demised Premises shall take priority at all times as necessary in order to protect and preserve the existence and priority of the collateral or security interest and/or lien rights of such Lender(s) in and to the Demised Premises, while at the same time preserving unto such Lender(s) the rights set forth herein and in Section 9.03 hereof to cure any defaults of Lessee hereunder in order to keep this Lease, and the PILOT, from being terminated.

Section 3.06. Subletting and Assignment.

(a) Subject to the provisions of the last two sentences of this Section 3.06(a), and provided that no uncured Event of Default exists under this Lease, Lessee may, without the prior consent of Lessor, assign its interest in this Lease (including, but not limited to, a transaction provided for in Section 3.05 above), or sublet any part of the Demised Premises to any subsidiary or entity related to Lessee in the normal course of Lessee's business; provided, however, that no assignment or sublease shall reduce or terminate any of the obligations of Lessee, and that any assignment or subletting shall be only for the purposes set forth in the Application and for only lawful and moral purposes. Any sublease shall be subject and subordinate to the terms of this Lease. Regardless of whether or not any such assignment or subletting requires the written consent of the Lessor as provided herein, Lessee shall give Lessor notice of any such assignment or subletting (including the name and address of the assignee or sublessee), and no such assignment or subletting shall be effective as to, or binding upon Lessor unless and until Lessor shall have received such notice. Promptly following the consummation of any permitted assignment or subletting, Lessee shall also provide Lessor with a copy of an instrument executed by the assignee or sublessee certifying that the assignment or sublease is in force and is subject to all of the terms and provisions of this Lease. Except as provided in Section 3.05 and in this Section 3.06, Lessee may not otherwise assign, sublet or otherwise transfer its rights or duties hereunder without the prior written consent of the Lessor, which consent shall not be unreasonably withheld or delayed, but any such transfer is subject to the Policies and Procedures of Lessor in effect at the time of the approval of the original Application, including, without limitation, the payment of any transfer fee. A material change in the use and operation of the Demised Premises from the use described in the Application shall be deemed a transfer of the interest, for which Lessor's prior consent shall be required, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary set forth in this Section 3.06, or any other provision of this Lease, if, as a result of any proposed sublease or assignment, or other transfer, the beneficiary of the PILOT program would be a party other than the Lessee, its parent, subsidiary, or other affiliated entity, then the consent of the Lessor shall be required, and shall not be unreasonably withheld, conditioned or delayed.

(b) In the event of the termination of this Lease pursuant to the provisions of Article IX hereof, the Lessor expressly agrees that such termination shall be subject to all the rights and privileges of any and all permitted sublessees of Lessee under the terms and provisions of their respective subleases so long as each such sublease shall be approved (if Lessor's consent to the subletting is required under the provisions of Section 3.06(a) hereof) in writing by the Lessor and so long as the sublessee under such sublease shall keep and perform all of the covenants and provisions of their respective subleases, and shall agree to attorn to the Lessor as landlord under the direct lease from Lessor, as hereinafter provided. It is agreed that, in the event of the termination of this Lease

pursuant to Article IX hereof, Lessor will thereupon enter into a direct lease of the Demised Premises to and for the benefit of such permitted sublessee, upon all of the same terms and provisions herein set forth and contained (including, but not limited to, the use provisions set forth in Section 3.02 hereof, and the payment in lieu of taxes provisions set forth in Section 6.02 hereof) for the balance of the Term of this Lease which would have remained, but for such termination; provided, however, Lessor's obligation to enter into such direct lease with such permitted sublessee shall be subject to the following conditions: (i) the termination of this Lease shall not have resulted from the failure of such permitted sublessee, to perform any of its undertakings and obligations as set forth or provided in this Lease or in the Application; (ii) no material uncured breach or event of default shall then be existing on the part of such permitted sublessee, under the sublease, as to which notice has been given and the time for curing (as provided in such sublease) has then expired; (iii) the use of the Demised Premises shall be for the purposes set forth and provided in this Lease and in the Application; and (iv) the Project will continue to be used in a manner that will constitute a "project" within the meaning of Section 7-53-101 of the Act.

(c) If the Lessee is a general partnership, a change during the Term of this Lease in the identity of any partner from one existing on the date this Lease is executed shall be deemed a change in the identity of the Lessee. If the Lessee is a limited partnership, a change during the Term of this Lease in the identity of any general partner, or limited partners with, in the aggregate, interests greater than twenty percent (20%) of the partnership, from those existing on the date this Lease is executed shall be deemed a change in the identity of the Lessee. If Lessee is a closely held corporation at the time this Lease is executed, a change in the identity of the shareholders who in the aggregate own more than thirty percent (30%) of any class of stock of the corporation from those existing on the date this Lease is executed shall be deemed a change in the identity of the Lessee. If Lessee is a limited liability company, a change during the term of this Lease in the identity of members with, in the aggregate, interest greater than thirty percent (30%) of the limited liability company from those existing on the date this Lease is executed shall constitute a change in the identity of the Lessee. If the Lessee is an entity whose shares are sold or traded publicly at the time this Lease is executed, a change in the identity of the shareholders shall not be deemed a change in the identity of the Lessee unless ownership of more than 50% of the interest in such entity shall change ownership in one or a series of closely-related transactions. As used herein, a change in the identity of the Lessee shall be deemed an assignment under this Section 3.06 and shall be subject to the requirements set forth in Section 3.06(a).

(d) Lessor hereby covenants that it will contemporaneously mail to any permitted sublessee of Lessee, at the address provided for in Section 14.07 below, or such address otherwise provided by Lessee, a duplicate copy of any and all notices in writing which Lessor may, from time to time, give or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Unless and until such notices are mailed to such sublessees, no action shall be taken by Lessor which would be prejudicial to any sublease, or to the rights of the sublessee thereunder. If any sublessee requests that Lessor execute any certificate or other documents, such sublessee shall be responsible to reimburse Lessor's actual expenses, and costs, and reasonable attorney fees incurred in reviewing documents or otherwise expended by Lessor as a result of such sublessee's transactions.

(e) Provided the provisions of Section 3.06(a) have been complied with, Lessee may assign in full its rights under this Lease from time to time upon notice to Lessor. Lessee shall provide Lessor with written evidence of the assumption by such assignee of Lessee's obligations under this Lease and the agreement by such assignee to be bound by the terms and conditions of this Lease in form and substance reasonably satisfactory to Lessor.

(f) Any permitted sublessee may, at its option and to the extent permitted by its sublease, at any time before the rights of Lessee shall have been terminated, as provided for herein, pay any of the rent due hereunder or do any other act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof, so as to prevent the termination of this Lease. All payments so made and all things so done and performed by such sublessee shall be as effective to prevent a termination of the rights of Lessee hereunder as the same would have been if done and performed by Lessee instead of by such sublessee.

ARTICLE IV RENT

Section 4.01. Basic Rent. Lessee shall pay to the Lessor at its offices at 125 N. Main Street, Room 468, Memphis, Tennessee 38103 without notice or demand as absolutely net basic rental (herein called "Basic Rent") for the entire Term of this Lease, the sum of One Thousand Dollars (\$1,000.00) which shall be payable in advance prior to the commencement of the term of this Lease, and shall be applicable as against all leases in connection with the Project, including but not limited to this Lease and the Personal Property PILOT Lease. Notwithstanding anything herein to the contrary, the total rent for the entire term for all real and personal property PILOT lease agreements in connection with the Project shall not exceed One Thousand Dollars (\$1,000).

Section 4.02. Additional Charges. Lessee shall also pay, as Additional Charges, those amounts set out in Article VI hereof and all other reasonable sums which Lessee shall be obligated to pay hereunder, whether or not such sums are specifically designated as Additional Charges. Lessee shall also pay, as Additional Charges, all Closing Fees, as defined in the Policies and Procedures (but only to the extent any payment of the foregoing are consistent with Lessee's rights and obligations under the Site Agreement), and all sums advanced by Lessor for or on behalf of Lessee hereunder. The Additional Charges shall be due by Lessee in accordance with the applicable provisions of this Lease and, if no date is specified, then on written demand. If such sums are advanced by a sublessee, such sums shall be credited against any amounts due to Lessee by any such sublessee. Any sums advanced by Lessor for or on behalf of Lessee after an Event of Default hereunder shall bear interest at the most recently published Wall Street Journal Prime Rate plus three percent (3%) as of the date of advance.

ARTICLE V REPRESENTATIONS, WARRANTIES & INDEMNIFICATION OF LESSOR - REPORTS

Section 5.01. Acceptance of Improvements; No Warranties; Authority.

(a) Lessee acknowledges and agrees that it has examined and is fully familiar with the Demised Premises and recognizes that, because the plans and specifications for the construction of the Improvements have been prepared at its direction and the Improvements have been, and to the extent they are not yet complete are to be, constructed under Lessee's supervision, Lessor makes no representation or warranty, either express or implied, and offers no assurance to anyone as to the condition of the Demised Premises, that the Improvements are or will be suitable for Lessee's purposes or needs or that the funds presently available for the Project will be sufficient to pay in full the cost of the Project. As to the Lessor, Lessee accepts the Demised Premises in its condition as of the Effective Date, and assumes all risks, if any, resulting from the failure of the Project to be completed or to comply with all legal requirements applicable thereto.

(b) Lessor hereby represents and warrants that is empowered and authorized under the laws of the State of Tennessee to enter into the transactions described in this Lease and to carry out its obligations hereunder.

Section 5.02. Failure or Defect in Title. Lessor shall not be liable to Lessee under the Lease or to anyone for any damages resulting from failure or any defect in Lessor's title which interferes with, prevents, or renders burdensome the use or occupancy of the Demised Premises or the compliance by Lessee with any of the terms of this Lease, or from delay in obtaining possession of all or any part thereof, from any cause whatsoever. No such failure of or defect in Lessor's title or delay in possession shall terminate this Lease or entitle Lessee to any abatement, in whole or in part, of Basic Rent, Additional Charges, or any other sums provided to be paid by Lessee pursuant to any of the terms of this Lease.

Section 5.03. Release and Indemnification.

(a) Lessee, for itself, its successors and assigns, hereby releases and forever discharges Lessor, including any incorporator, member, director, officer, employee, counsel or agent of Lessor, its successors and assigns from any claims, demands, causes of action, accounting, or any other matter arising in connection with, or related to Lessee's use and occupancy of the Demised Premises, provided, however, nothing contained herein shall be deemed to release Lessor from its undertakings and obligations pursuant to this Lease or the Site Agreement or any other agreement related thereto to which Lessor is a party, or from Lessor's gross negligence or willful misconduct.

(b) Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor, and any incorporator, officer, director, agent, counsel, or employee of Lessor, harmless, against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, to the extent arising from (i) the occupation, use, possession, conduct, or management of or from any work done in or about the Demised Premises or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Project or the occupancy or use of the Demised Premises, (ii) any condition of the Demised Premises and the adjoining sidewalks and passageways, (iii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iv) any act or negligence of Lessee, or any of its agents, contractors, servants, employees, or licensees, (v) any accident, injury, or damage whatsoever caused to any person, firm, or corporation, in or about the Demised Premises or upon or

under the sidewalks, or (vi) Lessor's ownership of the Demised Premises and the making of this Lease, and from and against all costs, reasonable counsel fees, expenses, and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section; provided, however, the foregoing indemnity obligations shall not apply to any claims arising out of Lessor's breach of this Lease or the Site Agreement or any other agreement related thereto to which Lessor is a party, or from Lessor's gross negligence or willful misconduct.

(c) Upon notice from Lessor, Lessee shall defend Lessor or any of its incorporators, officers, directors, agents, counsel, or employees (collectively, "Lessor's Agents"), in any action or proceeding brought in connection with any of the above. In lieu of such defense, Lessor shall be entitled to provide its own defense and charge Lessee with its reasonable expenses incurred in connection therewith, including, without limitation, reasonable attorneys fees. Lessor shall not settle any matter for which Lessee has an indemnification obligation without Lessee's prior written consent.

(d) The provisions of this Section shall survive the termination of this Lease.

Section 5.04. Application Representations; Reports.

(a) Lessee warrants and represents that it or its sublessee will comply with all terms and conditions of the Application which may be applicable to each of them in the Application, the Mayor's Letter and the Special Conditions, including without limitation the creation and/or maintenance of the Jobs at the Wages as represented in the Application, compliance with the Special Conditions, the timely completion and use of the Project, and the Capital Investment in the Project, all as represented in the Application; provided, however, Lessee, shall not be deemed to have breached those warranties and representations as to Jobs, Wages, Capital Investment or Special Conditions unless an uncured Event of Default exists pursuant to Section 9.01(b). Lessee acknowledges that, as provided in the Application and approved by Lessor, the Jobs, Wages, Capital Investment and Special Conditions in and for the Project are to be commenced by Lessee in Shelby County, Tennessee, provided Lessee shall have sixty (60) months from the Effective Date ("Ramp-up Period") to implement the Project and thereafter maintain the requirements of the Project for the duration of the Term of the Lease; provided, also however, that any jobs derived from mergers in Shelby County, significant loss of business in Shelby County, or cessation of Lessee's current operations in Shelby County (if any), shall not be counted as new jobs unless mutually agreed upon by Lessor and Lessee; in order to qualify for the Project as new jobs, no existing jobs shifted to the Project from another location within Shelby County without Lessor's approval will be included, nor should any job be counted towards the job creation of more than one PILOT project at a time, regardless of whether such job was shifted to the Project with Lessor's permission. If Applicant loses any written contract, or if material adverse economic event has occurred such that it is not economically viable to maintain the current Jobs, Lessee shall notify Lessor of such fact or condition, and Lessor may, in its sole discretion, allow deductions in Jobs for such reasons.

(b) On or before January 31 of each year during the Term of this Lease (the "Report Due Date"), Lessee shall, without any additional notice from Lessor, file or cause to be filed with Lessor an annual performance report substantially in the form attached hereto as Exhibit "E" (the "Annual Report"), or in such other form as shall be requested from time to time by Lessor upon

notice to Lessee containing all information required therein in order for Lessor to determine compliance of Lessee with the terms and requirements of this Lease, the Application, and the Mayor's letter as well as any other information reasonably requested by the Lessor to determine such compliance. Each Annual Report shall contain a statement that the Annual Report was prepared after due inquiry and is true and accurate to the knowledge, information and belief of Lessee and shall be sworn to and executed under oath by an authorized representative of Lessee before a notary public or other official authorized to administer oaths. Any Lessee utilizing third party vendor(s) to provide the workforce for the commercial operation of the Project shall provide a certified form from the vendor substantially as set forth in Exhibit "F" ("Vendor Report"). The Vendor Report shall include the fact that the agreement with the third party vendor is written and in duration of at least one (1) year or more, that the Vendor is in material compliance with all civil rights, labor and immigration laws, and any other information reasonably requested by the Lessor. The Vendor Report shall be filed with the Annual Report.

(c) The Lessee agrees that the Lessor shall have the right during business hours, upon reasonable advance notice to the Lessee, and without unreasonable interruption to Lessee's business operations, to inspect the Demised Premises and require necessary information to determine compliance with the provisions of Section 5.04 hereof and the accuracy of any Annual Report, including, but not limited to the necessary books, records and accounts of the Lessee. The Lessee authorizes the Lessor to obtain copies of any and all reports filed by the Lessee with the State of Tennessee or any other governmental entity relating to compliance with the undertakings of Lessee under this Lease, including, without limitation, reports concerning the employees or business operations of the Project.

Notwithstanding anything herein to the contrary, during any such entry upon the Demised Premises, Lessor and/or Lessor's representatives shall (i) be accompanied by a Lessee representative at all times, (ii) comply with and observe all safety procedures and rules proscribed by Lessee and sign all documentation Lessee customarily requires for third party access to the Demised Premises, including but not limited to any customary waivers, releases or similar documents, and (iii) not be entitled to examine any of Lessee's proprietary equipment, facilities or data, except as may be necessary to determine compliance with the provisions of Section 5.04 hereof and the accuracy of any Annual Report.

(d) If the Lessee fails to file the Annual Report by the Report Due Date, Lessee shall also pay as Additional Charges a late fee of Fifty Dollars (\$50.00) for each day the Annual Report is late (February 1 or later) until the Annual Report is filed, subject to a maximum fee of Three Thousand Dollars (\$3,000) which will accrue interest at the rate of 1.5% per month or the maximum rate allowed by law. Late Annual Reports shall be accompanied by the payment of the late fee when filed.

(e) Lessee shall comply with any now or hereafter reporting requirements of the Act, including, without limitation, the report required by Tennessee Code Annotated Section 7-53-305(f). Lessee shall provide a copy of the compliance report filed with the Tennessee State Board of Equalization (due on October 1) by October 15 of each year.

Section 5.05. The Agricultural, Forest and Open Space Land Act of 1976. Lessor and Lessee both acknowledge that the Facility Site is not, and has not been classified as agricultural land, forest land, or open space, or any other classification under the provisions of The Agricultural, Forest and Open Space Land Act of 1976, Tennessee Code Annotated Section 67-5-1001, et seq. (the "Greenbelt Law") which results (or has resulted) in the reduction or abatement of taxes. Lessor covenants and agrees that, unless specifically requested by Lessee, it shall not seek to have the Facility Site classified as agricultural land, forest land, or open space, or any other classification under the Greenbelt Law.

Section 5.06. Authorized Use. The Demised Premises shall be used for the purposes set forth in the Application. Lessee hereby covenants and agrees that the Demised Premises shall, during the term of the Lease, be used only and exclusively for lawful and moral purposes, and no part of the Demised Premises shall be used in any manner whatsoever for any purpose in material violation of the laws of the United States, the State of Tennessee, or the ordinances and laws of the City of Memphis, and the County of Shelby.

Section 5.07. Minimum Wages and Benefits. All Project Workers must make at least ten dollars (\$10) per hour. Additionally all Project Workers must at a minimum receive medical Benefits where Lessee pays at least fifty percent (50%) of the cost of the insurance program. Lessee shall certify its compliance with this Section 5.07 in its Annual Report.

Section 5.08. Title VI Compliance. The Lessee shall materially comply with all obligations applicable to the Lessee contained in Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000 d) ("Act") and the rules and regulations related to the Act.

Section 5.9. Shelby County Ethics Code Compliance. Lessee shall comply with all obligations applicable to the Lessee contained in the Shelby County Ethics Code, as amended from time to time after written notice from Lessor of any modifications.

ARTICLE VI TAXES, OTHER CHARGES AND EXPENSES OF LESSOR

Section 6.01. Agreement to Pay Additional Charges. Lessee agrees to pay and discharge, or cause to be paid and discharged, as Additional Charges during the Term hereof, punctually, as and when the same shall become due and payable:

(a) Each and every cost, expense, and obligation of every kind and nature, foreseen or unforeseen, for the payment of which Lessor or Lessee is or shall become liable by reason of their respective estates or interests in the Demised Premises or any portion thereof, by reason of any right or interest of Lessor or Lessee in or under this Lease, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use, or occupancy of the Demised Premises or the requirements of this Lease; provided however, the foregoing shall not apply to any costs, expenses or obligations which are specifically assumed by Lessor hereunder or which are specifically disclaimed herein by Lessee.

(b) All taxes of every type and description, utility charges, assessments (including, but not limited to, assessments for public improvements or benefits), payments in lieu of taxes, and all other impositions and charges of every kind and nature, extraordinary or ordinary, general or special, which at any time during the Term shall be or become due and payable by Lessor or Lessee which shall be levied, assessed, or imposed in connection with the Project or Demised Premises.

(c) All charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used, rendered or supplied to or in connection with the Demised Premises which are required to be paid by Lessor. Lessee agrees that Lessor is not, nor shall it be required, to furnish to Lessee or any other occupant, any gas, water, sewer, electricity, light, heat, power, or any other facilities, equipment, labor, materials, or services of any kind. Lessor will extend any rights it may have to Lessee, and will cooperate with Lessee, at Lessee's expense, in connection with obtaining the use of any such utilities and other facilities and services.

(d) All of Lessor's closing costs and reasonable expenses incurred, if any, in connection with the acquisition of the Facility Site by Lessor; provided however, Lessee's obligations under Sections 6.01(a), (b) and (c) are subject to Lessee's right to contest any of the aforementioned costs, expenses, obligations, taxes and charges, so long as Lessee shall give written notice to Lessor, and at its expense, shall be contesting the same or the validity thereof in good faith and in accordance with applicable law. Lessee covenants to furnish to Lessor, promptly upon request, proof of the payment of any amount or charge required to be paid by Lessee hereunder.

(e) The Lessee shall pay the Closing Fee and Termination Fee as required by the Application and Policies and Procedures (as qualified by the Site Agreement). The reasonable post-closing costs of Lessor and reasonable out of pocket expenses, including, without limitation, reasonable attorneys fees and expenses which are actually incurred by Lessor in connection with administering the Demised Premises and the Project or performing any act which it is required to do under this Lease all of which shall not exceed Two Thousand Dollars (\$2,000) per annum without the prior written consent of Lessee, and shall specifically exclude salaries, office overhead, depreciation, or security.

Section 6.02. Payments in Lieu of Taxes.

(a) Each year hereof, Lessee shall make PILOT payments as Additional Charges, in lieu of Memphis and Shelby County ad valorem taxes, in amounts computed as indicated below, in lieu of such taxes that otherwise would have been due and payable with regard to the Demised Premises, which consists of 218 acres of the 375.12 total acres of tax parcel number 050101 00067, were it owned by a tax-paying entity and subject to such taxation:

TIME PERIOD	PAYMENT IN LIEU OF TAX AMOUNT
For land only, from the Effective Date until the fifteenth (15 th) anniversary of	As to the PILOT payment in lieu of City of Memphis and Shelby County taxes, one hundred percent (100%) of the current tax assessment for land only for the Facility Site for each year which

the Effective Date.	would exist if the Facility Site were owned by a taxpaying entity, times the then current millage rate.
For land only, from the Fifteenth (15 th) anniversary of the Effective Date until termination of this Lease and the reconveyance of the Existing Tract to Lessee pursuant to the provisions of this Lease.	As to both Shelby County and City of Memphis, the then current land tax assessment that would exist if the Facility Site were owned by a taxpaying entity, times the then current millage rates plus any Additional Charges provided in 11.01.
For real property improvements only, from the Effective Date through the Fifteenth Anniversary Date of the Effective Date (_____, 202__)	<p>(i) As to the PILOT payment in lieu of County taxes:</p> <p>Twenty-five percent (25%) of the then current tax assessment for each year which would exist if the real property improvements on the Facility Site were owned by a taxpaying entity, <u>times</u> the then current millage rate.</p> <p>(ii) As to the PILOT payment-in-lieu of City taxes:</p> <p>Ten percent (10%) of the then current tax assessment for each year which would exist if the real property improvements on the Facility Site were owned by a taxpaying entity, <u>times</u> the then current millage rate.</p>
For real property improvements only, from the Fifteenth Anniversary Date of the Effective Date (_____, 202__) through the termination of this real property PILOT lease agreement and conveyance of the Facility Site to the Lessee	As to both County and City taxes, the then current tax assessment determined as though the Facility Site real property improvements were owned by a taxpaying entity, times the then current millage rate plus any Additional Charges provided in 11.01.

(b) All bills for payments in lieu of taxes as provided for in Section 6.02 shall be sent to: Electrolux Home Products, Inc., 10200 David Taylor Drive, Charlotte, North Carolina 28262, or to such other entity or address as Lessee may hereafter designate and provide to the tax collectors.

(c) The PILOT payments shall be due and payable on the same dates as ad valorem tax payments are due to Shelby County or the City of Memphis. If any such PILOT payments are not paid by the applicable delinquency dates for payment of taxes to Shelby County or the City of Memphis, then Lessee shall pay a penalty with respect to such delinquent PILOT payment from and after the delinquency date in the same amount as the penalty and all other charges which would be due on the corresponding Shelby County or City of Memphis ad valorem taxes.

(d) The PILOT payments shall be a lien on the Facility Site, which lien and PILOT obligation shall be enforceable in the same manner as ad valorem taxes.

(e) The PILOT payments shall be paid in the same manner and to the same tax collectors as are ad valorem taxes paid in the City of Memphis and Shelby County. Lessee shall have the right, in the name of Lessor, at its sole expense and without any expense to Lessor, to seek and prosecute an adjustment, by appeal or otherwise, of any tax assessment that is made by the tax assessor, and is applicable to the Demised Premises. Notwithstanding the foregoing or any other provisions of this Lease, however, it is the express intention of the Parties hereto that, pursuant to the provisions of Tennessee Code Annotated Section 7-53-305, the Demised Premises and the leasehold interests therein of Lessee, or any sublessee, shall be exempt from all taxation in the state of Tennessee, and that the PILOT payments as provided for in this Section 6.02 shall be made by and accepted from Lessee in lieu of all ad valorem taxes which are or may be assessed against the Demised Premises and the leasehold interests therein of Lessee or any sublessee for and during the Term of this Lease. In the event Lessee is required to pay any ad valorem taxes for that portion of the calendar year 201__, which precedes the acquisition of the Demised Premises by Lessor, Lessee shall be entitled to a credit for such amount against its first calendar year payment in lieu of taxes. If, following an Event of Default, the Demised Premises should legally be placed on the ad valorem tax rolls of the City of Memphis or Shelby County, the payment in lieu of taxes shall terminate and Lessee shall pay ad valorem taxes as required of a tax-paying entity. In the event Lessee's leasehold interest, but not Lessor's fee interest, shall become subject to ad valorem taxation, the payment in lieu of taxes called for hereunder shall continue, but shall be reduced on a cumulative basis by the amount of ad valorem taxes paid by Lessee with regard to its leasehold interest in the Demised Premises. In the event the payment in lieu of taxes obligation terminates, Lessee shall still have the right to exercise its rights contained in Section 11.01 hereof. In such event, the provisions of Sections 11.01 and 11.03 shall apply and Lessor shall reconvey the Demised Premises to Lessee, subject to any then existing indebtedness created or incurred by or at the request of Lessee; and Lessee shall pay to Lessor, as consideration therefor, the payment provided for in Section 11.01 hereof. Notwithstanding anything in this Lease to the contrary, the Lessor shall be considered and is the fee owner of the Demised Premises for all ad valorem tax purposes

(f) Lessee has the affirmative obligation to pay the PILOT payments due under this Lease. Lessor shall have no obligation to notify Lessee of any PILOT payments due under this Lease, the non-payment or delinquency of such payments or any interest or penalties resulting from the delinquency or non-payment of any such payments. Lessor shall promptly notify Lessee of any

assessment or reassessment of the Facility Site, or any appeal of such assessment or the results thereof to the extent Lessor gains knowledge of same.

Section 6.03. Other Taxes, Assessments, or Other Charges. Except as provided for in Section 6.02, but subject to Lessee's right to reduce its payments in lieu of taxes pursuant to Section 6.02 hereof in the event Lessee's leasehold interest becomes subject to ad valorem taxation, in the event any local, state, or national governmental body or agency enacts or imposes any tax, assessment, or other charge on realty or leasehold interests which are not in existence or collected as of the date of this Lease, Lessee shall pay said tax, assessment to such entity, or other charge as Additional Charges under this Lease and said tax, assessment, or other charge, if based on the assessment assigned to realty, shall be calculated on an assessment determined as though the Demised Premises were owned by a tax-paying entity.

Section 6.04. Survival. The obligations of Lessee to pay any amount due at the termination of this Lease pursuant to this Article VI, shall survive the termination of this Lease.

ARTICLE VII INSURANCE

Section 7.01. General Requirements. All insurance required hereby shall (i) be placed with responsible insurance companies qualified to do insurance business in Tennessee and against which Lessor has no reasonable objection, (ii) be evidenced by certificates delivered to Lessor, (iii) be in form and substance reasonably acceptable to Lessor, (iv) contain an undertaking by the respective insurers that such policies shall not be materially modified or canceled without prior written notice given to Lessor, (v) subject to the provisions of the last sentence of this Section 7.01, provide that the proceeds of such insurance shall be payable to Lessor and Lessee as their respective interests may appear, and (vi) subject to the provisions of the last sentence of this Section 7.01, to the extent obtainable, provide that any loss which shall be payable to Lessor shall be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance. It is understood that, notwithstanding any other provision set forth herein, at Lessee's option, such proceeds shall either be made available for the repair and/or restoration of the Demised Premises, or otherwise paid to Lessee upon its exercise of its Reconveyance Right set forth in Section 11.01 hereof.

Section 7.02. Fire and Extended Coverage. Lessee shall at its expense and as the payment of Additional Charges keep the Demised Premises insured against loss or damage by fire and earthquake, with an extended coverage endorsement for such other hazards as are normally covered by such endorsement at the full insurable replacement cost value of the Demised Premises. Lessee shall be named loss payee, and Lessor shall pay to Lessee any insurance proceeds received by Lessor.

Section 7.03. Public Liability Insurance. Lessee shall, at its expense and as the payment of Additional Charges, maintain comprehensive general public liability insurance naming Lessor as an additional insured against claims for bodily injury, death, or property damage occurring on, in, or about the Demised Premises in an amount of not less than \$5,000,000.00 for injury or death of a single person, \$5,000,000.00 for a single accident, and \$5,000,000.00 for property damage

combined single limit coverage. This requirement may be met by furnishing more than one policy provided that the total coverage is in the amounts specified. Lessor shall be furnished with certificates of such insurance.

Section 7.04. Renewal. Not less than ten (10) days prior to the expiration dates of the policies, certificates of the renewal thereof, reasonably satisfactory to Lessor shall be deposited with Lessor.

Section 7.05. Blanket Insurance Coverage. Lessee may maintain the insurance required under this Lease through a blanket insurance policy or policies acceptable to Lessor, may otherwise self-insure or utilize a captive insurance company, provided that Lessee shall, at all times, maintain coverage in an amount not less than provided in Sections 7.02 and 7.03 above. Lessee will furnish to Lessor certificates of such insurance coverage acceptable to Lessor. In lieu of carrying such insurance itself, Lessee may require its sublessee(s) to provide such insurance.

ARTICLE VIII MAINTENANCE, REPAIR, IMPROVEMENTS AND REPLACEMENT

Section 8.01. Agreements to Maintain and Repair. On and after the Effective Date, Lessee agrees at its expense to keep and maintain the Demised Premises in reasonable repair and condition. As used herein, "reasonable repair and condition" shall mean in accordance with the industry standards and practices for the conduct of Lessee's business. Lessee's obligation to maintain the Demised Premises in reasonable repair and condition, as set forth above, shall include interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen repairs, including the maintenance, repair, and replacement necessary to keep the equipment installed in the Demised Premises in reasonable repair and condition to the end that the Improvements and the Demised Premises are kept in reasonable and lawful order and condition, wear and tear from reasonable use and damage by fire and other casualty being expressly excepted, whether or not such repairs are due to any laws, rules, regulations, or ordinances hereinafter enacted which involve a change of policy on the part of the governmental body enacting the same. All permanent replacements, renewals, attachments, and accessories made to or placed on or affixed to any part of the Facility Site so as to become realty fixtures under applicable law, shall become a part of the same and the property of Lessor as made, provided, however, in the event that the Demised Premises are transferred to Lessee, whether as a result of the exercise by Lessee of its right to purchase pursuant to Article XI hereof, or otherwise, any deed or instrument of transfer shall include not only the Improvements to the Demised Premises, but also all such replacements, renewals, attachments and accessories constituting realty fixtures as aforesaid.

Section 8.02. Additional Plant and Facilities. Lessor and Lessee agree that in the event Lessee shall desire to construct on the Demised Premises any other material facilities, improvements or buildings not existing or complete upon the Effective Date or as provided for in the Application (the "Additional Improvements"), it shall have the right to do so but such Additional Improvements will not automatically become property of the Lessor until Lessee provides notice of the Additional Improvements, Lessor conducts a good-faith review to determine whether the Additional Improvements are material to the Lease and the parties enter into a new or

amended lease agreement providing for a new schedule of payments in lieu of taxes. No Additional Improvements shall be added to the Project after the midpoint of the Lease term. Notwithstanding the foregoing: (i) Lessee shall have the unconditional right, at any time, and without Lessor's consent to add Additional Improvements to the Demised Premises that do not to exceed One Hundred Fifteen percent (115%) of the value initially approved by the Lessor as Capital Investment, and such Additional Improvements shall become the property of Lessor and included as part of the Demised Premises and afforded the benefits under this Agreement; and (ii) any Additional Improvements in excess of those allowed pursuant to subsection 8.02(i) shall not be included as part of the Demised Premises and shall not be afforded the benefits under this Agreement unless and until such Additional Improvements are approved by the IDB pursuant to the provisions of this Section 8.02. Lessee shall provide Lessor written notice of its completion of the Additional Improvements within thirty (30) days of the completion of any Additional Improvements. Except as otherwise set forth in subsection (i) above, such Additional Improvements shall not be nor become a part of the Project for the purposes of this Lease without Lessor's prior written consent, and Lessee agrees to amend Section 6.02 of this Lease to reflect that such Additional Improvements are not entitled to a PILOT benefit under this Lease. If this Lease is not so amended after notice from Lessor, Lessor shall be entitled to increase the payment in lieu of taxes to reflect the increase in assessment of the Demised Premises due to the Additional Improvements by notice to Lessee by filing in the Shelby County Register's Office an amendment to this Lease if Lessor so elects. Any such new or amended lease shall be at the sole discretion of Lessor acting in good faith. The terms of this Section 8.02 shall not limit the Lessee's right to replace improvements to the Demised Premises, structural or otherwise. However, Lessor will make a good faith determination as to whether the improvement is a replacement or an addition.

Section 8.03. Lessor's Repairs. Lessor may, but shall not be required to, rebuild or make any repairs, replacements, or renewals of any nature or description in connection with this Lease or maintain the Improvements or the Demised Premises in any way; provided however, Lessor shall not make any such repairs, replacements, or renewals unless and until it has provided Lessee not less than thirty (30) days written notice, and Lessee has failed to commence or otherwise pursue such repairs, replacements, or renewals. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor. If Lessor shall (in its sole discretion) advance funds with which to make such repairs, replacements, renewals, or other expenditures as permitted hereunder, such sums shall be payable by Lessee as Additional Charges hereunder pursuant to Section 4.02 above.

Section 8.04. Additions to Demised Premises. Subject to Section 2.01 and Section 3.02 hereinabove, Lessee shall have the right to make replacements of, additions to, alterations of, and improvements to the facilities, improvements or buildings that are located upon the Demised Premises upon the Effective Date, structural or otherwise, to construct and equip additions thereto, to attach machinery, equipment, and fixtures thereto, as part of the Facility Site, and to modify all of the above at its expense (collectively, the "Modifications"), as it in its discretion may determine appropriate, and the same shall be eligible for the benefits granted herein, provided that the same shall not change the value of the Demised Premises in excess of One Hundred Fifteen percent (115%) or materially change the use thereof. No Modifications shall be added to the Project and made available for the benefits granted herein in excess of One Hundred Fifteen percent (115%) of the value initially approved by the Lessor as Capital Investment without the consent of the

Lessor in its discretion. The foregoing provision shall not apply to any portion of the Demised Premises which is not part of the PILOT Project. All work done in connection with such additions, alterations or improvements shall be done promptly and in good workmanlike manner. Lessee shall have no obligation to restore or return the Demised Premises to their original condition. The cost of such additions, alterations or improvements shall be paid for by or through Lessee. Upon the expiration or termination of this Lease, all such additions, alterations or improvements which have been affixed to the Real Property so as to become realty fixtures under applicable law, shall remain and shall belong to and be the property of Lessor, subject, however, to Lessee's Reconveyance Right under Section 11.01 hereof. The terms of this Section 8.04 shall not limit the Lessee's right to replace improvements to the Demised Premises, structural or otherwise. However, Lessor will make a good faith determination as to whether the improvement is a replacement or an addition.

Section 8.05. Personal Property. Lessee or its permitted sublessee, may at any time or times during the Term hereof install or commence the installation of any machinery, equipment, furnishings, trade fixtures, and other personal property to such extent as Lessee may deem desirable, provided, however, that such installation shall not be permitted to interfere with the use and operation of the Project as set forth in the Application or become an Additional Improvement unless Lessee complies with the requirements of Section 8.02 hereof.

ARTICLE IX DEFAULT; REMEDIES

Section 9.01. Events of Default. If any one or more of the following events (herein called "Events of Default") shall happen, this Lease may, subject to the provisions of Section 9.04(d) and to the rights of Lessee under Article XI hereof, be terminated, at the option of Lessor without demand or notice except as provided herein:

(a) If default shall be made in the due and punctual payment of Basic Rent or Additional Charges for more than thirty (30) days after written notice to Lessee from Lessor that such Rent has become due and payable and is unpaid.

(b) If default (to the extent provided in the following subsections (i), (ii), (iii) and (iv) of this Section 9.01(b)) shall be made by Lessee in its representations and warranties contained in the Application or in Section 5.04(a) of this Lease dealing with the creation and/or maintenance of Jobs, Wages, the making of the Capital Investment or the compliance with the Special Conditions, and such default is not cured within the cure period as set out hereinafter, to-wit:

(i) If Lessee shall fail, within the Ramp-up Period, to create or maintain the number of Jobs as represented by Lessee in the Application to be created and/or retained by the Project and such Jobs are not maintained thereafter from year to year during the entire Lease Term; or

(ii) If Lessee shall fail, within the Ramp-up Period, to achieve and to pay the total Wages for the Jobs created in conjunction with the Project as represented by Lessee in the Application and maintain thereafter that level of Wages throughout the Lease Term; or

(iii) If Lessee shall fail, within the Ramp-up Period to contribute, or cause to be contributed, the total Capital Investment to the Project, or cause such contribution to be made, as represented by Lessee in the Application; or

(iv) If Lessee shall fail, within the Ramp-up Period, to comply with the Special Conditions.

Upon determination by Lessor that Lessee is in default as specified in this Section 9.01(b), Lessor shall give written notice of such default to Lessee and Lessee shall have a period thereafter of sixty (60) days in which to cure such default, except in the case where a Lessee has been in default pursuant to Section 9.01(f) within the same calendar year then the cure period for this Section 9.01(b) shall be for thirty (30) days from the written notice of the 9.01(b) default. No Event of Default shall be deemed to have occurred under this Subsection 9.01(b) so long as the Project would, under the Policies and Procedures qualify for PILOT incentives no less than those provided in Section 6.02 of this Lease, as the same would be determined taking into consideration the totality of the Jobs, Wages, Capital Investment and Special Conditions actually created or being maintained or contributed (as the case may be) by the Lessee. Notwithstanding the above, the rescoring of Wages for this Subparagraph 9.01(b) shall be scored using the current Shelby County per capita income ("PCI") at the time of the Event of Default. If Lessor determines that Lessee is diligently pursuing cure of a default under this Section 9.01(b), Lessor may, in its sole, but reasonable, discretion, extend the time to cure such default or defaults.

(c) If any material representation or warranty made by Lessee herein or in the Application or in any statement or certificate furnished by Lessee either required hereby or in connection with the execution and delivery of the Application or this Lease, is untrue in any material respect as of the date of the issuance or making thereof, then this Lease may be terminated by Lessor upon fifteen (15) days written notice to Lessee. A statement by Lessee of the Jobs, Wages or Capital Investment to be included in the Project set forth in the Application, shall not be considered a violation of this Section 9.01(c) if such statement is a statement of the reasonable expectations of the Lessee on the date of the Application and on the date of this Lease.

(d) Subject to casualty or condemnation as provided in Article X, if Lessee shall fail to occupy, or shall abandon the Demised Premises or shall cease substantial operations at the Demised Premises and such acts or omissions shall remain uncured for more than thirty (30) days or Lessee (or its permitted Sublessee) shall cease to operate the Project or abandon same for a period of thirty (30) days, in which event, Lessor may cancel this Lease on thirty (30) days written notice to Lessee. Lessee shall give the Lessor at least thirty (30) days written notice of its intention to abandon or terminate the Project or cease operations at the Demised Premises.

(e) Lessee's failure to complete construction of the Improvements by the end of the Ramp-up Period or where applicable in the appropriate location to qualify for the CRC benefits granted, subject to the provisions of Section 9.02 hereof.

(f) Failure of Lessee to file on time any Annual Report(s) required under Section 5.04 hereof and the continuance of any such failure for more than thirty (30) days after written notice by

Lessor to Lessee; or if any information contained in any such Annual Report is untrue in any material respect.

(g) The occurrence of a default or an Event of Default (including, in any case, the expiration of any permitted period for the curing of any such default) under any other agreement between Lessor and Lessee, or any sublessee of the Demised Premises related to the Project, or any default under any document executed by Lessee related to the Project or the Demised Premises, including, without limitation, any deeds of trust or other security documents encumbering the Demised Premises or the Improvements, but only if any such default or Event of Default causes the Project to be disqualified as, or cease to constitute, a "project" within the meaning of Section 7-53-101 of the Act.

(h) Any material change in the use or operation of the Demised Premises and/or the Project from that set forth in the Application without the prior written consent of Lessor.

(i) Subject to casualty or condemnation as provided in Article X, the failure of Lessee to continuously operate a going business on the Demised Premises, in such a manner as to cause an uncured Event of Default pursuant to Section 9.01(b)(i), 9.01(b)(ii), 9.01(b)(iii), or 9.01(b)(iv).

(j) The appointment by any court or under any law of a receiver, trustee or other custodian of the Facility Site, assets or business of Lessee and the failure to have the same released or terminated within sixty (60) days after such appointment.

(k) The assignment by Lessee of all or any substantial part of its property or assets for the benefit of creditors and the failure to have such assignment released or terminated within sixty (60) days after such assignment.

(l) The levy of execution, attachment or other taking of a substantial part of the property or assets of Lessee, or of the leasehold interest of Lessee by process of law or otherwise in satisfaction of any judgment, debt or claim, and the failure to have the same released or terminated within sixty (60) days after such levy of execution, attachment or other taking.

(m) Subject to the provisions of Article XI of this Lease, Lessee's failure to surrender immediate possession of the Demised Premises to Lessor or Lessor's designee, upon expiration of the Term or such earlier termination as may be provided hereunder.

(n) The filing by or against (which involuntary filing is not dismissed within ninety (90) days of filing) Lessee of a petition for relief under the United States Bankruptcy Code or any proceeding for debtor or creditor relief.

(o) Failure to provide in a timely fashion any notice required under this Lease or the Application to be given to Lessor by Lessee.

(p) If default shall be made by Lessee in the due performance of or compliance with any of the terms of this Lease, and such default shall continue for thirty (30) days after Lessor shall have given Lessee written notice of such default unless another cure period is specifically provided

herein; or, in the case of any such default which cannot with due diligence be cured within such thirty (30) day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any default not susceptible of being cured with due diligence within the sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with due diligence as determined by Lessor in its sole discretion.

Section 9.02. Force Majeure. The provisions of Section 9.01 and Section 2.03 are subject to the limitation that if by reason of force majeure, as defined below, Lessee is unable, in whole or in part, to carry out its agreements and covenants herein contained, other than its obligation to pay Basic Rent and Additional Charges, Lessee shall not be deemed in default during the continuance of such inability.

The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, order of any kind of the government of the United States or the State of Tennessee, or any of their departments, agencies, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbance, explosions, breakage, or accident to machinery, transmission pipes, or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of Lessee.

Lessee agrees, however, to use good faith efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its respective agreements and covenants, provided that the settlement of strikes, lockouts, and other disturbances shall be entirely within the discretion of Lessee and that Lessee shall not be required to make settlement of strikes, lockouts, and other disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of Lessee, unfavorable to Lessee.

Section 9.03. Rights to Cure. Except with respect to the matters set forth in Section 9.01(b) above (as to which matters the rights set forth in Section 9.04(d) shall solely govern and apply), if Lessee at any time shall fail to make any other payment or perform any other act on its part to be made or performed under this Lease such that an Event of Default (as defined in Section 9.01) shall have occurred and then be uncured, Lessor (or Lender) may (but shall not be obligated to), upon ten (10) days prior written notice to Lessee and without waiving or releasing them from any obligations or defaults hereunder, make any such payment or perform any such act for their account and at their expense, and may enter upon the Demised Premises for that purpose and take all such action thereon as may be reasonably necessary therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor (or by Lender or any permitted sublessee) and all necessary and incidental costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the performance of any such act by Lessor (or by Lender or any permitted sublessee), together with interest at the highest legal rate per annum from the date of the making of such payment or the incurring of such costs and expenses by Lessor (or by Lender or any permitted sublessee), shall be deemed Additional Charges hereunder and shall be payable by Lessee to Lessor or to Lender on demand or credited against any sums due to Lessee from such permitted sublessee (as the case may be), and Lessee covenants to pay any such sum or sums with

interest at the rate stated above. Notwithstanding the foregoing, Lessor shall undertake no such curative actions and advance no funds at any time following written notice from Lessee of its exercise of the Reconveyance Right.

Notwithstanding anything herein to the contrary, during any such entry upon the Demised Premises, Lessor and/or Lessor's agents, contractors and/or representatives shall (i) be accompanied by a Lessee representative at all times, (ii) comply with and observe all safety procedures and rules proscribed by Lessee and sign all documentation Lessee customarily requires for third party access to the Demised Premises, provided however, that neither Lessor nor Lessor's representatives shall be required to agree to keep any information obtained in connection with such entry confidential, and (iii) not be entitled to take any actions beyond those that are reasonably necessary and/or prudent to cure such Default.

Section 9.04. Lessor's Rights Upon Default.

(a) Except as herein expressly otherwise provided, if an Event of Default occurs and shall be continuing for a period beyond the time allowed hereunder for curing said default, Lessor may exercise its right to terminate this Lease under Section 9.01 and, without further notice, may enter upon and repossess the Demised Premises and may remove Lessee and all other persons and any and all property from the Demised Premises; provided, however, that such remedies shall be exercised lawfully and in a manner which is not in contravention of the laws of the State of Tennessee. Notwithstanding the foregoing, Lessor shall not undertake or continue any such removal or repossession or dispossession actions at any time following written notice from Lessee of its exercise of the Reconveyance Right.

(b) Except as herein expressly otherwise provided, if an Event of Default occurs and shall be continuing for a period beyond the time allowed hereunder for curing said default, Lessor shall also, prior to the expiration of the Term of this Lease and without any obligation on the part of Lessor to terminate this Lease, have the right of entry, repossession, and removal, after not less than fifteen (15) business days prior written notice to Lessee of its intent to exercise such right and specifying the nature of the Event of Default, provided that such right shall be exercised lawfully and shall not be exercised in any manner in contravention of the laws of the State of Tennessee. In the event of the exercise of such right, without termination of this Lease, the Lease shall continue in full force and effect for the balance of its Term except that Lessee shall have no right of possession from the date of the exercise of such right; provided that the exercise of such right shall not preclude the subsequent exercise of any other right under this Lease, including the right of termination pursuant to Section 9.01 hereof. Lessor shall be under no liability for or by reason of any such lawful entry, repossession, or removal. Notwithstanding the foregoing, Lessor shall not undertake or continue such entry, removal or repossession or dispossession actions at any time following written notice from Lessee of its exercise of the Reconveyance Right.

(c) Lessee covenants and agrees to pay, and to indemnify Lessor from and against, all costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in accordance with this Lease in obtaining possession of the Demised Premises after default by Lessee or upon expiration or earlier termination of the Term hereof, or enforcing any covenant or agreement of Lessee contained in this Lease.

(d) In the event of the occurrence of an Event of Default described in Section 9.01(b) hereof, this Lease shall not be terminated, so long as Lessee complies with the provisions of this Section 9.04(d), but Lessor shall have the option, as hereinafter provided, to make a re-evaluation and adjustment (a "PILOT Adjustment") of the PILOT incentives provided in Section 6.02 of this Lease, and to amend Section 6.02 hereof accordingly. Any PILOT Adjustment, if made by Lessor, shall be based only upon the default criteria of Jobs, Wages, Capital Investment, and/or Special Conditions actually created, paid, or made with respect to the Project. Additionally, the rescoring of Wages for this Section 9.04(d) shall be scored using the current PCI at the time of the Event of Default. Any such PILOT Adjustment shall be made so as to produce and reflect from and after the effective date of the Event of Default (which includes any period allowed hereunder for the curing of any such default) the maximum PILOT Incentive (the "Adjusted PILOT Incentive") for which the Project would have been qualified or entitled under Lessor's Policies and Procedures. In the event Lessor determines to make a PILOT Adjustment, Lessor shall notify Lessee in writing and afford Lessee the opportunity to present such additional information with respect to the Project and to the proposed PILOT Adjustment, as may be appropriate to the determination, and Lessee shall promptly furnish such information as Lessor may request in connection with the making of such determination. Subject to the foregoing provisions, the decision of Lessor as to the Adjusted PILOT Incentive shall be in the sole discretion of Lessor. In the event that any PILOT Adjustment results in a determination that the PILOT incentives provided in Section 6.02 of this Lease are greater (with respect to the length of the Term of this Lease) than the Adjusted PILOT Incentive, then Lessor and Lessee shall enter into an amendment of this Lease to reflect such adjustment. In addition, Lessee shall thereupon pay (or cause to be paid) to the appropriate tax collectors, as an additional payment in lieu of taxes under Section 6.02 hereof, an amount (hereinafter called the "Recapture Payment") equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or for the account of Lessee under Section 6.02 hereof for the period (hereinafter called the "Recapture Period") following the occurrence of such Event of Default and until the amendment of this Lease, as aforesaid, and (ii) the total amount of the payments in lieu of taxes for which Lessee would be obligated under the Adjusted PILOT Incentive for the Recapture Period (it being acknowledged that from and after the amendment of this Lease pursuant to the foregoing provisions, Lessee will be making payments in lieu of taxes based upon the Adjusted PILOT Incentive). It is the intention of the parties, by the foregoing provisions, to provide that, after the effective date of the Event of Default, Lessee shall not receive any greater PILOT incentives than it is entitled to as aforesaid. The obligation for any Recapture Payment(s) required pursuant to this Section 9.04(d) shall survive the termination of this Lease and such obligation shall be a lien on the Demised Premises and enforceable by any and all remedies available to enforce the payment of real property taxes. Lessee hereby consents and agrees that any action or proceeding to enforce any of their obligations or to collect any payments due from them may be brought in the courts of the State of Tennessee in Shelby County, Tennessee, or in the courts of the United States of America for the Western District of Tennessee. Any PILOT Adjustment granted by Lessor shall comply with the requirements of Treasury Regulation § 1.141(e)(5).

(e) All of Lessor's rights under this Section 9.04 are subject and subordinate to Lessee's Reconveyance Right set forth in Article XI and to the rights of Lessee and any Lender under Section 3.06(b) hereof.

Section 9.05. Reletting. Except as otherwise provided herein, at any time or from time to time after the expiration of the Term of this Lease pursuant to Section 9.01, Lessor may, (but shall be under no obligation to) relet the Demised Premises or any part thereof for the account of Lessee, in the name of Lessee or Lessor, or otherwise without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions and for such uses as Lessor in its discretion may determine; and Lessor may collect and receive the rents therefor. Lessor shall have the same right to relet if it shall exercise its right of entry, repossession, or removal without termination of this Lease as provided in Section 9.04(b) hereof. Lessor shall not be responsible or liable for any failure to relet the Demised Premises or any part thereof, or for any failure to collect any rent due upon any such reletting. Any such reletting pursuant to this Section 9.05 shall, in all events, be subject to and expire upon the exercise of Lessee's Reconveyance Right set forth in Article XI hereof.

Section 9.06. Survival of Lessee's Obligations. No termination of this Lease pursuant to Section 9.01 hereof or repossession of the Demised Premises pursuant to Section 9.04 hereof, or otherwise, shall relieve Lessee of its liability and obligations hereunder due or accrued on the date of such termination or repossession or of any liabilities or obligations which are expressly provided in this Lease to survive any such termination or repossession, all of which shall survive any such termination or repossession. In the event of the termination of this Lease pursuant to Section 9.01 or in the event that Lessor shall exercise its right of entry without termination of the Lease as provided in Section 9.04(b), Lessee shall pay to Lessor the Basic Rent and all Additional Charges and other charges required to be paid, and not theretofore paid, under this Lease or otherwise, by Lessee up to the time of such termination or repossession; and thereafter Lessee, until the end of what would have been the Term of this Lease in the absence of such termination or repossession and whether or not the Demised Premises or any part thereof shall have been relet, shall be liable for and shall pay to Lessor as and for liquidated and agreed current damages for Lessee's default:

(a) The Basic Rent, Additional Charges, and other charges which would be payable under this Lease by Lessee if the Term of this Lease had not been terminated or the Demised Premises repossessed less:

(b) The net proceeds, if any, of any reletting effected for the account of Lessee pursuant to the provisions of Section 9.05, after deducting all of Lessor's necessary and incidental expenses actually incurred in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions (prorated for the number of years remaining in the Term), legal expenses, reasonable attorneys' fees and expenses, employees' expenses, reasonable alteration costs and expenses of preparation for such reletting. Lessee shall pay such current damages on the days on which the Basic Rent would have been payable under this Lease if the Term hereof had not been terminated or the Demised Premises repossessed, and Lessor shall be entitled to recover the same from Lessee on each such day.

Section 9.07. Additional Remedies.

(a) In the event of an Event of Default as set forth in 9.01(d), (e), (i), (j), (k), (l), (m) or (o) that causes the termination of the Lease prior to the end of original Term, rental payments due under this lease may at the Lessor's election be reset to the following Default Rent.

(i) Immediately upon the determination by the Lessor that an "Event of Default" as set forth in 9.01(d), (e), (i), (j), (k), (l), (m) or (o) has occurred, Lessor shall present the Lessee with its invoice for a lump sum portion of the Default Rent equal to:

A fraction equal to the remainder of the PILOT term not used divided by the original PILOT term multiplied by the benefit received from the inception to date of termination.

However, in no event shall the Lessee be obligated to repay more than one hundred percent (100%) of the tax benefit received.

(ii) Thereafter, Default Rent in the full amount of ad valorem taxes hypothetically payable upon the Premises at the appraised value and assessed rate and without abatement and assuming ownership by a taxable entity shall be invoice and payable until the end of this Lease.

(iii) The obligation for any Default Rent required pursuant to this Section 9.07(a) of this Lease and such obligation shall be a lien on the equitable interest of Lessee in any real or personal property in the Project and enforceable by any and all remedies available to enforce payment of real property taxes.

(b) In addition to such right to terminate this Lease and any other remedies provided for herein, whenever any Event of Default shall have happened and be continuing for a period beyond the time provided herein for curing the default, Lessor may (subject to the provisions of Section 9.04(d) hereof) take whatever other action at law or in equity may appear necessary or desirable to collect the Basic Rent, Additional Charges, and any other monetary obligation of Lessee hereunder when due, or to enforce any obligation, covenant, or agreement of Lessee under this Lease. If Lessor elects to terminate this Lease after Lessee's default, Lessor's remedies also include, but are not limited to, Lessor's right to convey the Demised Premises to Lessee retaining a vendor's lien for all sums due and payable to Lessor by Lessee at the time of the conveyance. However, this Section 9.07 shall not apply with respect to Lessee if Lessee exercises its Reconveyance Right pursuant to Article XI, in which case the rights of Lessor and Lessee shall be governed by the provisions of Article XI. Any such conveyance to Lessee by Lessor shall not relieve or otherwise affect any liability of Lessee to Lessor.

Section 9.08. Lessor's Rights Upon Default Due to Abandonment. Notwithstanding any other provision of this Lease to the contrary, in the event of an Event of Default under Section 9.01 (d) of this Lease, after the expiration of any applicable notice and right to cure period contained in this Lease, in addition to the other rights and remedies provided for in this Lease, the Lessee shall thereupon pay (or cause to be paid) to the appropriate tax collectors as an additional payment in lieu of taxes under Section 6.02 of this Lease, a Recapture Payment equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or for the account of

Lessee under Section 6.02 of this Lease for the period following the date of abandonment as determined by the Lessor (the "Abandonment Date", it being understood that the Abandonment Date shall trigger the Recapture Period), and (ii) the total amount of taxes which would have been payable for the Recapture Period as if the Facility Site were then owned by a taxpaying entity. It is the intention of the parties, by the foregoing provisions, to provide that, after the Abandonment Date, Applicant shall not receive any greater PILOT incentives than it is entitled to as determined by the Lessor in its sole discretion. The obligation for any Recapture Payment(s) required to be paid by the Lessee (any other provision of this Lease to the contrary notwithstanding) shall constitute a lien upon the Facility Site and enforceable by any and all remedies as are available to enforce the payment of real property taxes. The Lessee hereby consents and agrees that any action or proceeding to enforce any of its obligations or to collect any payments due from it may be brought in the courts of the State of Tennessee in Shelby County, Tennessee, or in the courts of the United States of America for the Western District of Tennessee. In the event of any conflict between this Section 9.08 and any other provision of this Lease, this Section 9.08 shall control.

Section 9.09. No Recapture. Notwithstanding anything in this Article IX, it is specifically acknowledged and agreed that no incentive, inducement or other benefit granted to Lessee under any provision of this Lease shall be subject to any recapture, clawback (other than a reduction of number of available years under this PILOT program pursuant to the terms of this Lease), refund or similar remedy, in the event of an Event of Default pursuant to Section 9.01(b)(i), and Lessor waives any claims related to any of the foregoing; provided, however, the foregoing shall not limit or otherwise impair Lessor's right to seek a PILOT Adjustment pursuant to Section 9.04(d).

ARTICLE X CONDEMNATION AND CASUALTY

Section 10.01. Condemnation Proceeds. If, during the Term, all or any part of the Demised Premises is taken by the exercise of the power of eminent domain or condemnation, Lessee shall receive the entire award for the taking. If the award is disbursed by the condemning authorities to Lessor, Lessor shall immediately pay the award to the Lessee. Lessee shall be entitled to the proceeds of any condemnation award or portion thereof separately awarded for damages to or takings of Lessee's property or for damages on account of the taking or an interference with Lessee's right to possession, use, or occupancy of the Demised Premises. Lessor hereby disclaims and assigns to Lessee any rights in and to any and all awards, payments, settlements and proceeds payable in connection with any casualty, condemnation or taking of the Demised Premises.

Section 10.02. Termination of Lease Upon Condemnation. If title to, or the use or control of, all or substantially all of the Demised Premises shall be taken by the exercise of the power of eminent domain or condemnation, or if such title, use, or control of a substantial part of the Demised Premises shall be so taken as results in rendering same unsatisfactory to Lessee for the purposes for which the same was used immediately prior to such taking or condemnation or similar use (to be determined in the sole judgment of Lessee), Lessee shall have the right to either acquire the Demised Premises pursuant to the provisions of Section 11.01 or terminate this Lease. Until the purchase or termination has taken place, this Lease shall continue in full force and effect without abatement of rent.

Section 10.03. Continuation of Lease Upon Condemnation. If a lesser portion of the Demised Premises be taken by exercise of the power of eminent domain or condemnation, this Lease shall nevertheless continue in full force and effect without abatement of rent. If such taking shall have caused damage to, or necessitated restoration or rebuilding of, any of the Demised Premises, Lessee, at its sole cost and expense and subject to any lender's rights under any mortgage or other encumbrance of the Demised Premises, shall promptly and diligently restore and rebuild to such condition as it shall deem reasonable in view of the nature of the taking and the then intended use of the Demised Premises by Lessee. Lessee and Lessor shall thereafter review the PILOT as to remaining Demised Premises and enter into an amendment of this lease as may be necessary or appropriate to amend and/or recalculate Lessee's PILOT obligations accordingly.

Section 10.04. Minor Casualty. If a minor part of the Demised Premises shall be destroyed or damaged, Lessee shall promptly notify Lessor and at Lessee's expense, Lessee shall promptly and diligently rebuild, restore, replace, and repair the same to such condition as it shall deem reasonable in view of the nature of the damage and the then intended use of the Demised Premises by Lessee, but only to the extent of the insurance proceeds actually received by Lessee. Lessor shall assign to Lessee (to the extent not previously paid to Lessor) and/or shall pay to Lessee (to the extent the same have previously been paid to Lessor) all insurance proceeds arising out of such damage or destruction.

Section 10.05. Substantial or Complete Casualty. If the entire Demised Premises, or substantial part thereof, shall be damaged or destroyed to such an extent that restoration thereof cannot be accomplished within ninety (90) working days from the date of damage (to be determined in the sole judgment of Lessee), Lessee shall have the right to either restore the Demised Premises as provided in Section 10.04, or acquire the Demised Premises pursuant to Section 11.01 and terminate this Lease; provided, however, that in either event Lessee elects to restore the Demised Premises or acquires the Demised Premises pursuant to the provisions of Section 11.01, Lessor shall then assign to Lessee (to the extent not previously paid to Lessor) and/or shall then pay to Lessee (to the extent the same have previously been paid to Lessor) all insurance proceeds arising out of such damage or destruction. The foregoing shall in no way, however, supersede or modify the rights of Lessee and any permitted sublessee (under a permitted sublease pursuant to the provisions of Section 3.06 hereof), as between themselves, as provided in any such permitted sublease. In addition, in the event that Lessee determines that it will not restore the Demised Premises, Lessee agrees that it will, within twelve (12) months of the substantial or complete casualty event, use good faith efforts to either (the "Restoration Obligation") (i) bring the Demised Premises, as a demolished or damaged building, in compliance with applicable building codes by repairing or rebuilding, or (ii) demolish the damaged building on the Demised Premises in a commercially reasonable fashion and rebuild in accordance with applicable law (either, a "Restoration"). In the event Lessee does not comply with the terms of the Restoration Obligation, Lessor may convey the Demised Premises to Lessee retaining a vendor's lien for all amounts reasonably required to ensure the eventual fulfillment of the Restoration (the "Restoration Lien"). The Restoration Lien shall be and is hereby made subordinate to the lien of any bona fide Encumbrance (as defined in Section 3.05 above), but only if all outstanding Restoration Obligations have been fulfilled on or prior to the date such Encumbrance is recorded. Notwithstanding the foregoing, in any event the Restoration Obligation shall be subject to actual receipt by Lessee of sufficient insurance proceeds from the related casualty

to cause the Restoration (Lessee hereby agreeing to use good faith efforts to adjust the related loss with the applicable insurance companies as soon as reasonably practicable).

ARTICLE XI RECONVEYANCE RIGHTS

Section 11.01. Reconveyance Rights. In consideration of the Lessee's entry into this Lease and other good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged and received (provided that such receipt shall not constitute an exercise of the rights set forth herein), Lessor and Lessee agree as follows:

(a) At any time during the Term, or within one hundred and twenty (120) days after the expiration or termination of this Lease for any reason whatsoever, including, without limitation, a Lessee Event of Default, Lessee shall have the unconditional right to require Lessor to convey all or a portion of the Demised Premises to Lessee, in one or more series of transactions, subject to any then existing indebtedness created by or for the account of Lessee, as permitted or provided for in this Lease (the "Reconveyance Right"). In such event, Lessor shall, for no additional consideration, promptly convey the Demised Premises, or applicable portion thereof, to Lessee in accordance with the terms of Section 11.02 below. Lessee shall exercise such right by providing written notice of such election to Lessor not less than thirty (30) days prior to the date of the desired reconveyance.

(b) If the Lease is terminated for any reason during the Term and Lessee has not exercised its Reconveyance Right, the Lessor shall provide written notice of same to Lessee within thirty (30) days after the termination of the Lease. If the Lessee fails to provide the necessary documentation to obtain the Demised Premises from the Lessor within ninety (90) days of the notice, a fee equal to \$1,000 per month, or any portion of a month, after the initial 90 day period shall be charged until the Demised Premises is reconveyed, unless the delay is caused solely by Lessor. Such fee shall be assessed as Additional Charges until the termination of this Lease. The exercise of the Reconveyance Right by Lessee shall not relieve Lessee from the payment of any monetary obligations which shall be due and payable by Lessee (including, without limitation, any such amounts that have accrued), under this Lease as of the date of conveyance pursuant to such exercise, all of which shall be paid by Lessee. Lessee shall notify Lessor in writing at least ten (10) days before the proposed date of purchase that the Lessee desires to exercise the Reconveyance Right and Lessor shall convey the Demised Premises to Lessee, subject always to the liens of any existing deeds of trust created by or for the account of Lessee and to the rights of Lenders thereunder. In the event that all expenses related to the purchase and any other sums due and payable hereunder are not paid, Lessor may convey the Demised Premises to Lessee retaining a lien for all sums due and payable to Lessor by Lessee at the time of the conveyance.

Section 11.02. Conveyance of Title. In the event of any conveyance of the Demised Premises or any portion thereof to Lessee pursuant to any provision of this Lease, Lessor shall convey title by a quit claim deed thereto to Lessee subject only to the Permitted Encumbrances and such additional encumbrances as may hereafter be created by or for the account of Lessee, as permitted or provided for in this Lease, but Lessor shall not otherwise be obligated to give or assign any better title to Lessee than existed on the first day of the Term of this Lease; provided, however, that Lessor acknowledges and agrees that Lessor has no authority or right to encumber

the Demised Premises or Lessor's interest therein by any encumbrances other than (i) the Permitted Encumbrances, (ii) those which Lessee has subsequently requested to be placed or caused to be placed against the Demised Premises, (iii) those which Lessee has subsequently approved in writing to be placed against the Demised Premises, or (iv) those for which Lessee is responsible under the express terms and provisions of this Lease and which arise as the result of any default by Lessee in the performance of its obligations under this Lease. Any other conveyance or encumbrance (other than those described in clauses (i) through (iv) inclusive of the preceding sentence) by or for the account of Lessor shall in all respects be subject and subordinate to Lessee's leasehold interest as created under this Lease and to Lessee's right to acquire title to the Demised Premises, free and clear of any such other conveyances or encumbrances, pursuant to Lessee's exercise of its Reconveyance Right for the Demised Premises pursuant to this Article XI; and any such other conveyance or encumbrance, and any rights or liens created thereunder or arising therefrom shall be automatically terminated, released and extinguished by the conveyance of the Demised Premises to Lessee by Lessor by a quit claim deed as provided for in this Section 11.02, and thereafter all such conveyances, encumbrances, rights or liens shall be void and of no further effect. Subject to the foregoing, Lessee shall accept such title, subject, however, to (i) any liens, encumbrances, charges, exceptions, and restrictions not created or caused by Lessor or Lessor's Agents, and (ii) any laws, regulations, and ordinances. Lessor shall be responsible for all costs and expenses in connection with the conveyances set forth in this Article XI, including but not limited to all recording costs and applicable transfer taxes, if any.

Section 11.03. Survival of Rights. All provisions of this Article XI shall survive the expiration of the Term of this Lease (including any extensions thereof) or the termination of this Lease pursuant to any provision hereof (including, but not limited to, any termination pursuant to Article IX or Article X hereof).

ARTICLE XII ENVIRONMENTAL MATTERS

Section 12.01 Lessee's Environmental Representations and Warranties. Lessee represents and warrants to Lessor and its successors and assigns that:

The Demised Premises and its existing and future uses by Lessee comply with in all material respects, and will at all times comply with in all material respects, and Lessee is not in material violation of, and has not materially violated and will not materially violate, in connection with the Lessee's ownership, use, maintenance or operation of the Demised Premises and the conduct of the business related thereto and therein shall, at all times, comply in all material respects with any applicable federal, state, county or local statute, law, regulation, rule, ordinance, code, license or permit relating to environmental matters, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Clean Air Act of 1986, as amended, 42 U.S.C. § 7401, et seq., the Clean Water Act of 1977, as amended, 33 U.S.C. § 1251, et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, et seq., the National

Environmental Policy Act of 1975, 42 U.S.C. § 4321, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300, et seq., the Emergency Planning and Right-to-Know Act of 1982, 42 U.S.C. § 11001, et seq., the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-101, et seq., the Tennessee Air Quality Act, Tenn. Code Ann. § 68-201-101, et seq., the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. § 68-211-101, et seq., the Tennessee Hazardous Waste Management Act, Tenn. Code Ann. § 68-212-101, et seq., the Tennessee Petroleum Underground Storage Tank Act, Tenn. Code Ann. § 68-215-101, et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any petroleum, petroleum byproduct (including, but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas, or hazardous, toxic, radioactive or any other regulated substance, product, material, waste, pollutant or contaminant which are defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," or other similar designations by federal, state or local laws, regulations or ordinances (hereinafter "Hazardous Waste"), as may now or at any time hereafter be in effect (hereinafter "Environmental Laws"). Lessor acknowledges that Lessee makes no representation or warranty of any type or nature regarding any pre-existing environmental conditions related to the Demised Premises.

Section 12.02. Lessee's Continuing Responsibility for Environmental Matters.

Lessee covenants, at its sole cost and expense, to remove or cause to be removed or take or cause to be taken remedial action with regard to any Hazardous Waste released to the environment at, on, or from the Demised Premises while under Lessee's possession and control during the Term of this Lease or any extension thereof for which any removal or remedial action is required pursuant to any Environmental Law. No such removal or remedial action shall be taken except after reasonable advance written notice to Lessor; provided, however, that no notice shall be required if immediate action is required in order to comply with the requirements of any laws, rules, ordinances or regulations of any governmental entity or if immediate action would diminish the extent of any environmental problem or hazardous condition. Lessee shall indemnify Lessor for any action taken by Lessee, in accordance with Section 12.03 hereof to Lessor's reasonable satisfaction. As between Lessor and Lessee, Lessee shall at all times retain any and all liabilities arising from the handling, treatment, storage, transportation or disposal of any Hazardous Waste by Lessee or by any of Lessee's contractors at, on, or from the Demised Premises while under Lessee's possession and control during the Term of this Lease or any extension thereof.

Section 12.03. Lessee's Indemnification.

(a) Lessee shall indemnify and hold Lessor and its officers, directors, agents, counsel and employees harmless from and against any and all liabilities, losses, claims, penalties, damages (including, without limitation, interest, penalties, fines and monetary sanctions, and exclusive of those matters caused by the gross negligence or willful misconduct of Lessor), and costs (collectively, hereinafter "Loss"), and reasonable attorneys' and consultants' fees and expenses, court costs and all other out-of-pocket expenses (collectively, hereinafter "Expense") incurred or suffered by Lessor by reason of any cleanup, removal or other remediation of any Hazardous Waste contamination of the Demised Premises by Lessee ordered by a government

authority having jurisdiction to order the same ("Remediation"), or by third party suit, if resulting from or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Lessee contained or referred to in this Article XII. Notwithstanding the foregoing, Lessee shall undertake and perform any such Remediation and to control all communications with regulatory or governmental agencies with respect thereto, and Lessor shall not perform any such Remediation or make such communications nor be entitled to any indemnification hereunder unless, in addition to the other provisions of this Section (w) Lessor is specifically required by Environmental Laws, court order or regulatory order to perform such Remediation, (x) Lessor notifies Lessee of such contamination promptly after Lessor has actual knowledge or reasonable belief of its existence, (y) Lessor promptly provides copies to Lessee of any notices given or received by Lessor related to such contamination and (z) Lessee has failed or refused to perform such acts and communications after having been afforded reasonable written notice by Lessor and having had reasonable opportunity to perform such acts and communications. Lessee shall keep Lessor reasonably apprised of progress and activities with respect to any such Remediation undertaken by Lessee, including providing Lessor with a copy of each environmental testing or sampling report regarding the Demised Premises prepared by or on behalf of Lessee and of each material submittal and written communications and notifications made to and from the relevant government authority.

(b) All representations, warranties, covenants, agreements and indemnities of Lessee contained in this Article XII shall survive the Term of this Lease or any extensions hereof and the consummation of the transactions contemplated in this Lease, and none of the foregoing shall be affected by an investigation by or on behalf of Lessee, or by any information Lessee may have or obtain with respect thereto.

ARTICLE XIII DIVERSITY PLAN

Lessor and Lessee acknowledge and agree that Lessee's commitment to be consistent with its historic practices to be inclusive and to promote minority and women businesses shall be considered a satisfactory Diversity Plan and shall satisfy the Lessor's policies in connection with same.

ARTICLE XIV MISCELLANEOUS

Section 14.01. Recording. A memorandum of this Lease shall be executed and recorded in the proper public office for the recordation of deeds in Shelby County, Tennessee. Lessor shall pay costs and expenses in connection with same.

Section 14.02. Waivers. No waiver of any breach shall affect or alter this Lease or constitute a waiver of any other then existing or subsequent breach.

Section 14.03. Remedies. Subject to the express provisions and limitations of this Lease, each right, power, and remedy of Lessor and/or Lessee provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided

for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers, and remedies are sought to be enforced, and the exercise of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor and/or Lessee of any or all such other rights, powers, or remedies. Notwithstanding the foregoing, the remedies set forth in Sections 9.03 through 9.07 shall be Lessor's sole and exclusive remedies for an uncured Event of Default by Lessee, and further provided that in the event that Lessee shall exercise its Reconveyance Right pursuant to Article XI hereof, Lessee shall only be obligated to pay the Basic Rent, Additional Charges, Recapture Payment, and other charges accrued under the Lease through the date of transfer of the Demised Premises to Lessee.

Section 14.04. No Claims Against Lessor. Except as provided herein, nothing contained in this Lease shall constitute any consent or request by Lessor, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Demised Premises or any part thereof, nor give Lessee any right, power, or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any personal claim against Lessor.

Section 14.05. Quiet Enjoyment. Lessor does not make any representation or covenant that Lessee shall have quiet and peaceful possession of the Demised Premises; however, Lessor agrees that it will not take any action to interfere with Lessee's peaceful and quiet enjoyment of the Demised Premises and that in the event the peaceful and quiet enjoyment of the Demised Premises shall be denied to Lessee or contested by anyone, Lessor shall upon request of Lessee join where necessary in any proceeding to protect and defend the quiet enjoyment of Lessee, provided that Lessee shall pay the entire cost of any such proceeding and reimburse, indemnify, and hold harmless Lessor from any cost or liability whatsoever. Lessor shall make no expenditures in connection therewith without Lessee's prior written consent.

Section 14.06. Governing Law; Entire Agreement. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee without regard to any conflicts of laws principles. This Lease, together with the action taken by the Lessor granting the PILOT incentives with respect to the Project set forth in the minutes of the meeting of the Board of Directors of the Lessor held on January 12, 2011 and January 19, 2011, the Site Agreement, the Construction Agreement, the Personal Property PILOT Lease, and the Application (collectively, the "Related Documents"), expresses the entire agreement of the Parties hereto. In the event of any conflict between this Lease, the Construction Agreement and/or the Site Agreement, this Lease shall govern and control, provided however, that nothing herein shall be construed to amend, cancel, terminate or otherwise modify the terms, conditions and/or the parties' obligations set forth in Article X and Sections 3.2, 4.1, 5.3, 11.2, 12.5, and 12.6 of the Site Agreement; provided Section 4.01 of the Site Agreement shall not be construed to modify the terms of the PILOT benefits granted to Lessee herein. Neither Party hereto shall be bound by any agreement or representation to the other Party which is not expressly set forth in this Lease and the Related Documents and/or the Annual Reports. Any lawsuit filed to enforce the terms of this Lease shall be filed in the appropriate state or federal court located in Shelby County, Tennessee.

Section 14.07. Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 14.08. Notice. All notices, certificates, demands, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be deemed to have been properly given and received if delivered in person or if sent by United States certified or registered mail, postage prepaid, to the Lessor or Lessee (as the case may be) or if sent by a nationally recognized commercial overnight delivery service (including, but not limited to, FedEx, Airborne, or United Parcel Service) which provides proof of delivery, addressed to the Lessor or Lessee (as the case may be) at such addresses as they respectively may have designated from time to time in writing, and if to any Lenders under Section 3.05, or any permitted sublessee under Section 3.06, addressed to their principal offices, or at such addresses as said Lenders or said permitted sublessees shall have designated from time to time in writing to Lessor and Lessee. At the commencement of this Lease:

Lessor's address is

125 N. Main Street, Room 468
Memphis, Tennessee 38103
Phone: 901-576-7107

with a copy to Board Counsel

Mark E. Beutelschies
Assistant Shelby County Attorney,
Farris Mathews Branam Bobango Hellen &
Dunlap PLC
999 S. Shady Grove Road, Suite 500,
Memphis, Tennessee 38120
Phone: (901)259-7120

Lessee's address is

Electrolux Home Products, Inc.
10200 David Taylor Drive
Charlotte, North Carolina 28262
Attn: Jacob Burroughs
(980) 236-2264

with a copy to Lessee's Counsel

Electrolux Home Products, Inc.
10200 David Taylor Drive
Charlotte, North Carolina 28262
Attn: General Counsel
(980) 236-XXXX

Delivery in person shall be effective on the date of delivery. Delivery by mail shall be effective three (3) days from the date of posting in the United States Mail. Delivery by recognized commercial overnight delivery service shall be effective on the next business day following the date

on which the notice is delivered to the recognized commercial overnight delivery service for delivery by it.

Section 14.09. Estoppel Certificates. Lessor shall, without charge, at any time and from time to time, within thirty (30) days after receipt of written request therefore from Lessee or from any Lender or purchaser of the Lessee's interest in the Demised Premises (or prospective Lender or purchaser) deliver, in recordable form, a duly executed and acknowledged certificate or statement to the parties requesting said certification or statement, or to such other party, firm or corporation designated by Lessee, certifying:

- 1) Lessor acknowledges the loan to be made to Lessee, by Lender;
- 2) the Lease is presently in full force and effect and unmodified except as indicated at the end of this certificate and that there are no claims against Lessee or Applicant thereunder;
- 3) the Lessee accepted possession of the Facility Site;
- 4) as of this date, there is no default by Lessee or Applicant under the Lease;
- 5) simultaneously with serving a default or other notice upon the Lessee or Applicant, Lessor shall serve a copy of such notice upon Lender, addressed as follows:

- 6) Lender shall have the right (but no obligation) to cure any default under the Lease within the applicable time for cure by Lessee provided therein or as may otherwise be permitted by Lessor;
- 7) in the event of a default by Lessee under the Lease, Lessor shall take no action to terminate the Lease without first giving Lender notice and a reasonable time within which to complete foreclosure proceedings or otherwise acquire Lessee's interest under the Lease in accordance with the provisions of the Lease;
- 8) the address for notices to be sent to Lessor is as set forth above;
- 9) in the event of termination of the Lease for any reason whatsoever, whether as a result of expiration of its term, default by Lessee, Lease cancellation, voluntary surrender or otherwise, if Lender notifies Lessor that the loan secured by the Facility Site is in default, then Lessor shall (a) allow Lender such time as may be required (provided Lender is diligently pursuing its remedies) to complete foreclosure proceedings or otherwise acquire Lessee's interest thereunder, and thereafter (b) permit Lender to exercise Lessee's Reconveyance Right to acquire fee title to the Demised Premises pursuant to the Lease (notwithstanding its termination) upon Lender's acquiring Lessee's interest in the Demised Premises;
- 10) no agreement modifying the Lease shall be effective without the prior written consent of Lender (provided that Lender shall not act in bad faith or unreasonably in withholding such consent) except for amendments, modifications or terminations which are contemplated by the provisions of the Lease;

- 11) notwithstanding any provision of this document to the contrary, no personal liability or recourse of any kind or nature under or upon any representation, warranty, obligation, covenant, or agreement contained in this Estoppel or any other instrument or by the enforcement of any legal or equitable proceeding or under any circumstances, shall be had against Lessor or any incorporator, member, director, officer or counsel, as such, past, present, or future, of Lessor, either directly or through Lessor, or otherwise, for the payment of any sum or performance of any undertaking that may be due to any party. Any and all personal liability of every nature, whether at common law or in equity, or by statute, constitution, or otherwise of Lessor or any such incorporator, member, director, officer or counsel of Lessor, as such, to respond by reason of any act or omission on its, his or her part, or otherwise, for, directly or indirectly, the payment or performance under this Estoppel or any other agreement or undertaking, is hereby expressly waived and released as a condition of and in consideration for the execution of this Estoppel by Lessor, and;
- 12) at the request of Lessor, and as an inducement for Lessor to execute and deliver this Estoppel, Lessee does hereby indemnify Lessor and each incorporator, member, director, officer or counsel of Lessor, as such, past, present, or future (the "Indemnified Parties") against and save all Indemnified Parties harmless from any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including costs of defense and settlement and reasonable attorney fees) which the Indemnified Parties may suffer, incur or be responsible for or pay out as the result of Lessor's execution of this document, except, with respect to Lessor only (and not including any other Indemnified Parties), to the extent that such arises from the gross negligence or willful misconduct of Lessor through no fault of Lessee. This indemnification shall be in addition to and not in derogation of any other indemnifications contained in any agreement between Lessor and any other party. Lessee joins in the execution of this Estoppel solely for the purpose set forth in this Section 14.09.

Section 14.10. Headings. Headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof.

Section 14.11. Construction of Certain Words. Wherever the sense of this document requires it, the singular shall be construed to include the plural and the plural the singular, and wherever the masculine, feminine, or neuter gender is used, each shall be construed to include either or both of the others if the sense of this document so requires. "Including" shall mean "including without limitation."

Section 14.12. Successors. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 14.13. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 14.14. Amendments. Except as set forth in Section 14.17, this Lease may be modified or amended only by an instrument in writing signed by the Parties (or their respective successors or assigns).

Section 14.15. Performance by Lessee. Lessee may satisfy any or all of its undertakings and obligations provided for in this Lease by causing its permitted sublessee to perform the same.

Section 14.16. Lessor's Limitation of Liability - No Personal Liability. Anything in this Lease to the contrary notwithstanding, Lessee agrees that it shall look solely to the Demised Premises for the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Lessor and no other property or assets of the Lessor shall be subject to levy, execution or other procedures for the satisfaction of the Lessee's remedies hereunder.

Section 14.17. Power of Attorney. Upon the occurrence of an uncured Event of Default, Lessee hereby irrevocably appoints Lessor as its attorney in fact, which agency is coupled with an interest to execute any documents required to terminate this Lease or amend this Lease in accordance with the terms of this Lease by reducing the Term, any such documents may, at Lessor's option, be recorded in the public records as Lessor shall elect; provided that Lessor shall give written notice to Lessee at least thirty (30) days prior to executing any such documents.

Section 14.18. Lenders. No Lender (or its designee as may have acquired the Leasehold Estate) shall become personally liable under the agreements, terms, covenants or conditions of the Lease unless and until it becomes the holder of the Leasehold Estate. Upon any assignment of the Lease by a Lender, or such designee, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Lessor a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions contained in the Lease on Lessee's part to be performed and observed, it being the intention of the Parties that once the Lender (or such designee) shall succeed to Lessee's interest under the Lease, a subsequent assignment by such Lender (or such designee) shall effect a release of such Lender's (or such designee's) liability hereunder as provided herein.

Section 14.19. Tax Treatment. Lessor and Lessee acknowledge and agree that the Lessee is intended to be treated as the owner of the Demised Premises for purposes of federal, state and local income taxes and the Lessee shall file all reports or returns relating to federal, state or local income taxes consistent with such intention.

[Separate Signature and Acknowledgment Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

PILOT LEASE - LESSOR SIGNATURE PAGE

LESSOR:

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY
OF SHELBY, TENNESSEE

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared _____, and _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be _____ and _____ of THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public not-for-profit corporation of the State of Tennessee, the within named bargainor, a corporation, and that they as such _____ and _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as _____ and _____.

WITNESS my hand and seal, at office this ____ day of _____, 2011.

NOTARY PUBLIC

My Commission Expires:

PILOT LEASE - LESSEE SIGNATURE PAGE

LESSEE

Electrolux Home Products, Inc.

By: _____

Title: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, _____, a Notary Public in and for said State and County aforesaid, duly commissioned and qualified, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the _____ of **ELECTROLUX HOME PRODUCTS, INC.**, a Delaware corporation, and that as such _____, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the _____ as such _____.

WITNESS my hand and seal at office on this the ____ day of _____, 2011.

Notary Public

My Commission Expires:

G:\data\hmg\MEB\SHELBY.COUElectrolux\Real Property Lease Agr FBB 4.15.11.DOC

EXHIBIT "A" TO FORM PILOT LEASE

Facility Site Legal Description

LEGAL DESCRIPTION OF PART OF THE CITY OF MEMPHIS, TENNESSEE, COUNTY OF SHELBY, TENNESSEE AND THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION PROPERTY AS RECORDED PER SPECIAL WARRANTY DEED NO. 04017823 IN THE SHELBY COUNTY REGISTER'S OFFICE, BEING PART OF LOTS 11, 13, AND 14 AS SHOWN ON THE PLAT OF THE ENSLEY PLANTATION OF RECORD IN PLAT BOOK 3-PAGES 59 AND 60 IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE, ALL LYING IN THE CITY OF MEMPHIS, SHELBY COUNTY, TENNESSEE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET 1/2 INCH REBAR IN THE WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD (PUBLIC PAVED ROAD, 84' R.O.W.) AS DEDICATED PER INSTRUMENT NO. 03180949, SAID POINT BEING LOCATED 2,366.51 FEET SOUTH AND 371.03 FEET WEST OF THE TANGENT INTERSECTION OF THE CENTERLINES OF PAUL R. LOWRY ROAD AND RIVERPORT ROAD, SAID POINT OF BEGINNING BEING FURTHER LOCATED AT TENNESSEE STATE PLANE COORDINATES OF 291699.07 FEET NORTH AND 726137.90 FEET EAST (NAD 83) AND SAID POINT OF BEGINNING ALSO BEING THE SOUTHEAST CORNER OF THE MEMPHIS, LIGHT, GAS, AND WATER PROPERTY AS RECORDED PER SPECIAL WARRANTY DEED NO. HB2558;

THENCE SOUTH 07 DEGREES 54 MINUTES 21 SECONDS WEST - 2,984.67 FEET ALONG THE WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD TO A SET 1/2 INCH REBAR ON A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 1,442.00 FEET AND A CENTRAL ANGLE OF 10 DEGREES 23 MINUTES 19 SECONDS; THENCE SOUTHWESTWARDLY ALONG THE ARC A DISTANCE OF 261.46 FEET (CHORD BEARING AND DISTANCE OF SOUTH 02 DEGREES 42 MINUTES 41 SECONDS WEST- 261.10 FEET) TO A SET 1/2 INCH REBAR; THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY OF PAUL R. LOWRY ROAD, NORTH 64 DEGREES 53 MINUTES 58 SECONDS WEST - 1,310.70 FEET TO A SET 1/2 INCH REBAR; THENCE NORTH 54 DEGREES 21 MINUTES 03 SECONDS WEST - 1,224.94 FEET TO A SET 1/2 INCH REBAR ON THE NORTH LINE OF A FORMER 400 FOOT TVA EASEMENT NOW OWNED BY THE CITY OF MEMPHIS, TENNESSEE AND SHELBY COUNTY, TENNESSEE PER INSTRUMENT G52092; THENCE NORTH 64 DEGREES 47 MINUTES 32 SECONDS WEST, A DISTANCE OF 174.75 FEET ALONG THE NORTHERLY LINE OF SAID FORMER TVA EASEMENT TO A SET 1/2" REBAR; THENCE LEAVING THE NORTHERLY LINE OF SAID FORMER TVA EASEMENT, NORTH 34 DEGREES 20 MINUTES 39 SECONDS WEST, A DISTANCE OF 708.25 FEET TO A SET 1/2" REBAR; THENCE NORTH 11 DEGREES 45 MINUTES 28 SECONDS EAST, A DISTANCE OF 639.44 FEET TO A SET 1/2" REBAR; THENCE NORTH 22 DEGREES 50 MINUTES 12 SECONDS EAST, A DISTANCE OF 1,475.47 FEET TO A SET 1/2" REBAR; THENCE NORTH 14 DEGREES 31 MINUTES 04 SECONDS EAST, A DISTANCE OF 938.66 FEET TO A SET 1/2" REBAR IN THE NORTH LINE OF THE CITY OF MEMPHIS, TENNESSEE, COUNTY OF SHELBY, TENNESSEE AND THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION PROPERTY AS RECORDED PER SPECIAL

WARRANTY DEED NO. 04017823 AND SOUTH LINE OF THE COUNTY OF SHELBY AND CITY OF MEMPHIS PROPERTY AS RECORDED PER QUIT CLAIM DEED 03180949; THENCE SOUTH 82 DEGREES 05 MINUTES 39 SECONDS EAST, A DISTANCE OF 1,155.50 FEET ALONG THE NORTHERLY LINE OF THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION PROPERTY AND SOUTHERLY LINE OF SAID COUNTY OF SHELBY AND CITY OF MEMPHIS PROPERTY AS RECORDED PER QUIT CLAIM DEED 03180949 TO A SET 1/2" REBAR; THENCE LEAVING SAID NORTHERLY LINE, SOUTH 07 DEGREES 59 MINUTES 04 SECONDS WEST, A DISTANCE OF 935.29 FEET TO A SET 1/2" REBAR; THENCE SOUTH 82 DEGREES 05 MINUTES 39 SECONDS EAST, A DISTANCE OF 769.49 FEET TO A SET 1/2" REBAR ON THE NORTHWEST CORNER OF THE AFORESAID MEMPHIS, LIGHT, GAS, AND WATER PROPERTY; THENCE SOUTH 07 DEGREES 54 MINUTES 21 SECONDS WEST, A DISTANCE OF 350.00 FEET TO A FOUND 1/2" REBAR ON THE SOUTHWEST CORNER OF SAID MEMPHIS, LIGHT, GAS, AND WATER PROPERTY; THENCE SOUTH 82 DEGREES 05 MINUTES 39 SECONDS EAST - 500.74 FEET (CALL=500.00' PER MLGW DEED) TO THE POINT OF BEGINNING.

CONTAINING 9,496,080 SQUARE FEET OR 218.000 ACRES, MORE OR LESS.